**Purchasing Office**
191 South East Street
Frederick, Maryland 21701
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Frederick County Public Schools
Reach. Challenge. Prepare.

Kerrie Koopman CPPB, CPPO,
Purchasing Manager
**Kim Miskell, CSBO, Assistant Purchasing Manager**
Bill Meekins CPPB, CPPO, CSBO, CPCP,
Purchasing Agent
Shane Ryberg, Purchasing Agent

# *ADDENDUM*

June 8, 2020

**ADDENDUM # 3**
**RFP 20MISC11, Construction Management Services**
**DUE DATE: Thursday, June 11, 2020, prior to and no later than 2:00 P.M. at**
**https://secure.procurenow.com/portal/fcps**

This addendum is being issued to provide additions, corrections, clarifications and answers to certain questions raised referencing the original proposal packages and any resultant contracts for the above bid.

1. This Addendum includes the following attachment(s):
   a. A133-2019 As Amended by FCPS (50 pages)
   b. A201-2017 As Amended by FCPS for CM at Risk Contracts (74 pages)

Thank you for your interest in bidding with Frederick County Public Schools and we apologize for any inconvenience this may have caused.

Sincerely,

*Kim Miskell*

Kim Miskell, CSBO
Assistant Purchasing Manager

KM/ab

cc: Adnan Mamoon, Director of Capital Programs, Division of Operations

# AIA® Document A133™ – 2019

## *Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price*

**AGREEMENT** made as of the day of in the year
*(In words, indicate day, month, and year.)*

**BETWEEN** the Owner:
*(Name, legal status, address, and other information)*

The Board of Education of Frederick County,
a body corporate and politic of the State of Maryland
191 South East Street
Frederick, Maryland 21701-5918

and the Construction Manager:
*(Name, legal status, address, and other information)*

TBD

for the following Project:
*(Name, location, and detailed description)*

TBD

The Architect:
*(Name, legal status, address, and other information)*

TBD

The Owner and Construction Manager agree as follows.

**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.


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## ARTICLE 1 INITIAL INFORMATION

**§ 1.1** This Agreement is based on the Initial Information set forth in this Section 1.1.
*(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")*

**§ 1.1.1** The Owner's program for the Project shall be as identified in the draft or final education specification provided or as specified herein.:

**§ 1.1.1.1** The Project is described in the attached **Exhibit A Project Description**.

**§ 1.1.1.2** The design of the school or facility for this Project (the "Design") shall include all amenities to allow efficient functionality including, but not limited to signage, security system, computer network integration including servers, exterior lighting, sidewalks, landscaping and exterior features as required to obtain a site plan, interior design services, modular workstations, playing fields, roadways, parking areas, landscaping, storm water management systems, utilities, vehicular and pedestrian access and circulation and other items specified herein, and other services and items reasonably expected and incidental to delivering an elementary school building ready for occupancy. The Architect and the design team, as assembled and determined by the Architect, (the "Design Team") shall use commercially reasonable efforts to meet the desires of the "Design Guide: FCPS Standards for Design of New and Renovated Facilities" as amended, which states preferences for the Project, a copy of which shall be available to the Architect upon request, and shall be adopted and incorporated herein by reference. If preferences are found to be unadvisable or do not comply with the building and other relevant codes and regulations, the Design Team shall promptly bring this to the attention of the Owner.



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**§ 1.1.1.3** Design and civil engineering services for the Project's entire site that meet and achieve all required approvals by applicable governmental agency or agencies having jurisdiction over the Project (the "**Applicable Governmental Authorities**").

**§ 1.1.1.4** The school or facility for the Project shall be heated and air-conditioned except for areas identified by the Owner in writing. The school or facility for the Project shall be equipped with a state of the art building automation system; the specific requirements for such will be coordinated between the Architect, the Construction Manager and the Owner's Maintenance and Operations Department.

**§ 1.1.1.5** The Construction Manager shall conform and/or provide construction and other services as stipulated in the appropriate Educational Specifications for the Project, Design Guide: FCPS Standards for the Design of New and Renovated Facilities, correspondence between the Owner and the Construction Manager for the purposes of the specific solicitation for services, written documentation and clarifications of interview discussions, and the latest edition or version of the "State of Maryland, Public School Construction Program, Administrative Procedures Guide."

**§ 1.1.1.7** Duties, responsibilities and limitations of authority of the Architect shall not be restricted, modified or extended beyond those set forth in this Agreement without written agreement of the Owner and the Construction Manager.

TBD

**§ 1.1.2** The Project's physical characteristics:
*(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)*

TBD

**§ 1.1.3** The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:
*(Provide total and, if known, a line item breakdown.)*

TBD

**§ 1.1.4** The Owner's anticipated design and construction milestone dates:

**.1** Design phase milestone dates, if any:

TBD

**.2** Construction commencement date:

TBD

**.3** Substantial Completion date or dates:

TBD

**.4** Other milestone dates:

TBD

**§ 1.1.5** The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
*(Identify any requirements for fast-track scheduling or phased construction.)*


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TBD

**§ 1.1.6** The Owner's anticipated Sustainable Objective for the Project:
*(Identify and describe the Owner's Sustainable Objective for the Project, if any.)*

New or totally renovated schools funded by the State of Maryland, or for which State funding may be requested, are required to achieve LEED Silver Certification. The Architect shall provide complete designs and specifications required to comply with LEED Silver Certification as a minimum requirement. The Architect shall prepare the Project charrette for the Project's scheduling meetings at the beginning of an integrative design process that sets the stage for cooperation and collaboration among all participants, including the Design Team, the Owner, the Construction Manager, and others involved in the Project. Early involvement of the entire Project team is fundamental to the successful use of a system approach to green building. The Architect shall address the Construction Manager's green building requirements in the bid documents such that Construction Manager's scope requirements are a known requirement to be included in the Guaranteed Maximum Price. The Design shall require services and construction materials supporting the LEED points identified and approved by the Owner as the charrette is being developed and modified during the Design process. The Construction Manager will be responsible for coordinating with the Architect for the construction phase LEED points throughout the design process. During the construction phase of the Project, the Construction Manager will be responsible for managing, tracking, and documenting as required for the Project to achieve the construction phase LEED Points.

**§ 1.1.6.1** If the Owner identifies a Sustainable Objective, other than as identified in Section 1.1.6 above, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

**§ 1.1.7** Other Project information:
*(Identify special characteristics or needs of the Project not provided elsewhere.)*

TBD

**§ 1.1.8** The Owner identifies the following representative in accordance with Section 4.2:
*(List name, address, and other contact information.)*

**§ 1.1.9** The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:
*(List name, address and other contact information.)*

The Frederick County Public Schools ("FCPS") Maintenance and Operations Departments,
The FCPS Facilities Services / Constriction Managements / Planning Department,
The FCPS Food Service Department,
The FCPS Transportation Department,
The FCPS Technology Services Department,
The FCPS Elementary or Secondary School Improvement, Instruction and Administration Departments, and
The applicable FCPS School Administration

**§ 1.1.10** The Owner shall retain the following consultants and contractors:
*(List name, legal status, address, and other contact information.)*


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.1 Inspection and Testing Agency:

TBD

.2 Commissioning Agent:

TBD

.3 Other, if any:
*(List any other consultants retained by the Owner, such as a Project or Program Manager.)*

- Third Party Constructability Reviewer
- Building Envelope Commissioning Consultant
- Other 3rd party Consultants as needed

**§ 1.1.11** The Architect's representative:
*(List name, address, and other contact information.)*

TBD

**§ 1.1.12** The Construction Manager identifies the following representative in accordance with Article 3:
*(List name, address, and other contact information.)*

TBD

**§ 1.1.13** The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:
*(List any Owner-specific requirements to be included in the staffing plan.)*

TBD

**§ 1.1.14** The Owner's requirements for subcontractor procurement for the performance of the Work:
*(List any Owner-specific requirements for subcontractor procurement.)*

**§ 1.1.15** Other Initial Information on which this Agreement is based:

The Construction Manager acknowledges and agrees that time is of the essence and that failure to timely perform and complete the services under this Agreement will result in significant costs, expenses, and damages to the Owner, including but not limited to damages for loss of use and enjoyment, extended overhead and management costs, extra or extended services by the Construction Manager or other contractors, claims by design professionals, and possibly other types of costs, expenses and damages incurred by the Owner. Construction Manager is responsible to the Owner for all such costs, expenses and damages, including but not limited to both economic and noneconomic losses, and liquidated damages, to the extent caused by the Construction Manager or those for whom the Construction Manager has contracted or is otherwise responsible.

**§ 1.2** The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner, in its sole and absolute discretion, may adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. In the event the Owner chooses to make such adjustement(s), the Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

**§ 1.3** Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.


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## ARTICLE 2 GENERAL PROVISIONS

### § 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement and some of which may be issued after execution of this Agreement, other documents listed in this Agreement, and Drawings, Specifications, Addenda, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

### § 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

### § 2.3 General Conditions

**§ 2.3.1** For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

**§ 2.3.2** For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

## ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

### § 3.1 Preconstruction Phase

#### § 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

**§ 3.1.2** The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.


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### § 3.1.3 Consultation

**3.1.3.1** The Construction Manager shall provide the following services relating to design and construction tasks:

**.1** The Construction Manager shall consult with, advise, assist, and provide recommendations to the Owner, the Architect and other members of the design team on all aspects of the planning and design of the Work.

**.2** The Construction Manager shall jointly schedule and attend regular meetings with the Architect and Owner's Authorized Representative. The Construction Manager shall consult with and advise the Owner and the Architect regarding site use and improvements, and the selection of materials, building systems and equipment.

**.3** The Construction Manager shall provide recommendations to the Owner and Architect, consistent with Project requirements, on construction feasibility and constructability; availability of materials and labor; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; prefabrication; and factors related to construction cost including, but not limited to, costs and estimates of alternative designs or materials, preliminary budgets and possible economies, life-cycle data, and possible cost reductions.

**.4** The Construction Manager shall review in-progress design documents, including the documents generally described in the industry as Schematic Design Documents, Design Development Documents, and Construction Documents and provide input and advice to eliminate areas of conflict, overlapping trade jurisdictions, and overlaps in the Work to be performed by the various subcontractors, and to endeavor to confirm that all Work has been included in the Contract Documents.

**.5** Construction Manager shall review completed Schematic Design Documents, Design Development Documents, and Construction Documents and suggest modifications whenever design details affect construction feasibility, schedules or cost in an effort to maintain the Project Budget and to improve completeness and clarity.

*(Paragraph deleted)*

**§ 3.1.3.2** The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

**§ 3.1.3.3** The Construction Manager shall assist the Owner and Architect, as determined to be necessary by Owner in Owner's sole and absolute discretion, in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

### § 3.1.4 Project Schedule

The Construction Manager shall provide the following services related to the Project schedule:

**.1** The Construction Manager shall prepare, and periodically update, a preliminary Project schedule for the Architect's and Owner's review and approval.

**.2** The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services.

**.3** The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Architect, and Construction Manager. As design proceeds, Construction Manager shall update the preliminary Project schedule to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price ("GMP") proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement, and Owner's occupancy requirements showing portions of the Project having occupancy priority, provided that the date(s) of Substantial Completion shall not be modified without Owner's prior written approval. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect

### § 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.


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### § 3.1.6 Cost Estimates

The Construction Manager at Risk shall provide the following services relating to cost estimating:

.1 The Construction Manager shall within **fourteen (14) days** of Notice of Award prepare a Statement of Probable Construction Cost utilizing area, volume or similar conceptual estimating techniques for review by the Architect and approval by the Owner. The Statement of Probable Construction Cost shall include appropriate contingencies for design, bidding or negotiating, price escalation and market factors.

.2 When Schematic Design Documents have been prepared by the Architect, the Construction Manager shall, within **fourteen (14) days**, prepare a more detailed Statement of Probable Cost in a Level 1 Uniformat estimate or in another format approved by the Owner, for review by the Architect and approval by the Owner. During the preparation of the Design Development Documents, the Construction Manager shall, within **seven (7) days** update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

.3 When Design Development Documents have been prepared by the Architect, the Construction Manager shall, within **fourteen (14) days**, prepare a detailed Statement of Probable Construction Cost with supporting data in a Level 2 Uniformat estimate or other format approved by the Owner for review by the Architect and approval by the Owner. During the preparation of the Construction Documents, the Construction Manager shall, within **seven (7) days** update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

.4 If any Statement of Probable Construction Cost submitted to the Owner and Architect exceeds previously approved Statements of Probable Construction Cost or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Architect and Owner to reduce the Probable Construction Cost.

.5 Construction Manager shall notify the Owner, Architect and other members of the design team immediately if any construction cost estimate appears to be exceeding the construction budget.

.6 The Construction Manager shall work with the Architect and Owner to develop a GMP within the Target GMP (Or Owner's Budget) as stated in the Request for Proposals unless a change in the Target GMP (Or Owner's Budget) is approved by the Owner, in Owner's sole and absolute discretion. Upon completion of the Construction Documents, the Construction Manager shall, in consultation with the Architect, furnish to the Owner a final and detailed Level 3 UniFormat probable cost estimate, including local versus state funding in accordance with the Statewide Adequacy Standards and local match requirements.

**3.1.7** To accomplish the objective set for in paragraph 3.1.6.4 above, the Construction Manager shall provide consultation throughout the Preconstruction Phase including, but not limited to the furnishing of all necessary Value Engineering services. The object of the Value Engineering is to achieve optimum value for each construction dollar spent and keep the time of completion and cost of the Work within the time and fiscal constraints set forth in the Contract Documents. In cooperation with the Owner and the Architect, the Construction Manager shall:

.1 Formulate and evaluate alternative design, systems, and materials;

.2 Provide cost estimates of the alternatives to be evaluated. Cost estimates shall include industry standard operating and maintenance costs when appropriate to evaluate life-cycle costs of the alternatives;

.3 Evaluate the alternatives on the basis of costs, time schedules, availability of labor and materials and construction feasibility;

.4 Prepare written reports at the end of the Schematic Design Phase and the Design Development Phase summarizing the Value Engineering activities. The reports shall indicate each Value Engineering alternative considered, the cost estimate for the alternative, the cost to incorporate the alternative and whether or not the Owner and the Architect agreed to accept the alternative.

.5 In addition to the reports discussed in subsection 3.1.7.4 above, the Construction Manager shall maintain a running log of all Value Engineering alternatives considered throughout the entire preconstruction period. The log shall include the cost estimate for the alternative, the cost to incorporate the alternative and indicate whether or not the Owner and the Architect have agreed to incorporate the alternative.

*(Paragraphs deleted)*


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**§ 3.1.7** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

**§ 3.1.8** The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

**§ 3.1.9** The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

**§ 3.1.10** If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

**§ 3.1.11 Subcontractors and Suppliers**

**§ 3.1.11.1** After the Schematic Design, Design Development and Construction Documents are complete, the Construction Manager shall prepare bid packages and solicit price proposals for the Work in accordance with FCPS Bidding procedure, COMAR, and all other state of Maryland procurement regulations. The Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

**§ 3.1.11.2** The Construction Manager shall develop bidders' interest in the Project.

**.1** The Construction Manager shall seek to develop subcontractor and supplier interest in the Project, and shall furnish to the Owner and Architect for their information a list of possible subcontractors and suppliers, including suppliers who may furnish materials or equipment fabricated to a special design, from whom competitive bids, quotes, or proposals (collectively, "Offers") will be requested for each principal portion of the Work. Submission of such list is for information and discussion purposes only and not for prequalification.

**.2** The Construction Manager shall provide input to the Owner and Architect and other members of the design team regarding current construction market bidding climate, status of key subcontract markets, and other local economic conditions. Construction Manager shall determine the division of work to facilitate bidding and award of trade contracts, considering such factors as bidding climate, improving or accelerating construction completion, minimizing trade jurisdictional disputes, and related issues. Construction Manager shall advise Owner on subcontracting opportunities for MBE businesses.

**3.1.12** The Construction Manager shall recommend to the Owner and Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule, which shall be procured by the Construction Manager upon execution of either a GMP Amendment or Early Work Amendment covering such procurement, and approval of such schedule by the Owner. The Construction Manager shall expedite the delivery of long-lead time items.

**3.1.13** The Construction Manager shall work with the Owner in identifying critical elements of the Work that may require special procurement processes, such as prequalification of Subcontractors or Material Suppliers or alternative contracting methods.

*(Paragraphs deleted)*

**§ 3.1.1.4 Procurement**

The Construction Manager shall prepare bid packages and solicit price proposals for the Work in accordance with FCPS Bidding procedure, COMAR, and all other state of Maryland procurement regulations. The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. The Owner may agree to procure any items prior to the establishment of the Guaranteed Maximum Price. The Owner may also decide to bid certain bid packages directly to the subcontractor market. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for the items listed above to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.


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**§ 3.1.15 Compliance with Laws**

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

**§ 3.1.16 Other Preconstruction Services**

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

*(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)*

**§ 3.2 Guaranteed Maximum Price Proposal**

**§ 3.2.1** At a time to be selected by the Owner, in Owner's sole and absolute discretion, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's Cost of the Work, the Construction Manager's Not To Exceed General Conditions amount (including insurance, and Payment and Performance Bond costs), as submitted on the Bid Form, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

**§ 3.2.2** To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom.

**§ 3.2.3** The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

.1 A list of the Drawings and Specifications, including all addenda thereto, including conditions of the contract

**.2** The proposed Contract Sum, including a written statement of estimated cost organized by trade categories, allowances, contingencies, Construction Manager's Fee, and other items that comprise the Contract Sum;

**.3** A list of the clarifications and assumptions made by the Construction Manager, if any, in the preparation of the Guaranteed Maximum Price

**.4** The proposed Guaranteed Maximum Price, including a statement of the estimated Cost of Work organized by trade categories, allowances, contingency funds, Construction Manager's not to exceed General Conditions, Construction Manager's lump sum fee, and other items and the fees and costs that comprise the Guaranteed Maximum Price. All scopes of Work and Contract Sums set forth in the assigned Contractor Agreements shall be included in the Cost of the Work as part of the Guaranteed Maximum Price. The Construction Manager shall also include in its Guaranteed Maximum Price all costs for self-performed and/or other Contractor Work (not otherwise included in the Contractor Agreements);

**.5** The Construction Manager shall include a contingency fund ("Contingency Funds") in the Guaranteed Maximum Price to cover unforeseen conditions, Owner-generated requests, design errors/omissions, and charges related to gaps in the scope of Work as allocated among Contractors by the Construction Manager. In no event shall charges, including, but not limited to, charges relating to errors/omissions or delays chargeable to the Construction Manager or Project costs not approved in writing in advance by the Owner, be charged to any area of the contingency. The Contingency Fund shall be identified in the schedule of values as a separate line item. The Contingency Fund may be drawn upon by the Construction Manager to pay the cost of the Work provided if (1) the Construction Manager provides the Owner with a written explanation of each requested draw upon the Contingency Fund along with the back-up documentation requested by the Owner (2) the Owner provides written authorization of each requested draw upon the Contingency Fund, and (3) each Application for Payment contains a report aggregating the Construction Manager's use of the Contingency Fund. Any amount remaining in the Contingency Fund shall be kept by the Owner and the Construction Manager shall prepare a deductive Change Order reducing the Construction Manager's Guaranteed Maximum Price by the amounts remaining in the Contingency Fund, if any, prior to final payment;

**.6** All construction and Project schedules upon which the Guaranteed Maximum Price is based, including, but not limited to, the Project Schedule and any preliminary schedules,


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.7 An enumeration of any qualifications and exclusions, if applicable; and

.8 A list of the Construction Manager's key personnel, Contractors and suppliers.

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§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price. Use of any contingency during the construction phase of the Project must be approved in writing by the Owner.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner accepts the Guaranteed Maximum Price proposal , the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all required and applicable sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

### § 3.3 Construction Phase

### § 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

### § 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

#### § 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.


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**§ 3.3.2.4 Daily Logs**
The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

**§ 3.3.2.5 Cost Control**
The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

## ARTICLE 4 OWNER'S RESPONSIBILITIES

**§ 4.1 Information and Services Required of the Owner**

**§ 4.1.1** The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

**§ 4.1.2** Intentionally deleted.

**§ 4.1.3** Intentionally deleted.

**§ 4.1.4 Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**§ 4.1.4.1** The Owner shall furnish tests, inspections, and reports, required by law, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

**§ 4.1.4.2** Within a reasonable time after receiving the same from the Architect, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

**§ 4.1.4.3** The Owner, when such services are deemed necessary by Owner and the Architect, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

**§ 4.1.5** During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

**§ 4.1.6** If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.


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**§ 4.2 Owner's Designated Representative**
The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

**§ 4.2.1** Intentionally deleted.

**§ 4.3 Architect**
The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

**ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**
**§ 5.1 Compensation**
**§ 5.1.1** For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:
*(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

The Owner shall compensate and make progress payments to the Construction Manager in accordance with this Article 11 for Preconstruction Services performed prior to the execution of the Guaranteed Maximum Price Amendment. For all required Preconstruction Services, the Construction Manager's compensation shall not exceed $_____, which is a fixed fee that should include all Preconstruction Services costs for the Project (the "Preconstruction Fee"). The Preconstruction Fee shall be the Construction Manager's sole compensation for the Preconstruction Services for the Project. For Preconstruction Services, fifty percent (50%) of the total Preconstruction Fee shall be held by the Owner until the earlier to occur of the following: (1) the full execution of the Guarantee Maximum Price Amendment at which time the Owner shall release any retainage of the Preconstruction Fee to the Construction Manager; or (2) this Agreement is terminated pursuant to Section 13.1 at which time the fifty percent (50%) retainage of the Preconstruction Fee shall be forfeited by the Construction Manager and the Owner shall no longer be obligated to pay the Construction Manager the fifty percent (50%) retainage of the Preconstruction Fee.

**§ 5.1.2**
*(Paragraphs deleted)*
Intentionally deleted.
**§ 5.1.2.1** Intentionally deleted.

**§ 5.1.3** Intentionally deleted.

**§ 5.2 Payments**
**§ 5.2.1** Unless otherwise agreed, and except as otherwise provided in this Agreement, payments for services shall be made monthly in proportion to services performed.

**§ 5.2.2**
*(Paragraphs deleted)*

**ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES**
**§ 6.1 Contract Sum**
**§ 6.1.1** The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

**§ 6.1.2** The Construction Manager's Fee:


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*(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)*

The Owner shall compensate and make progress payments to the Construction Manager in accordance with this Article 11 for Construction Phase Services performed after execution of the Guaranteed Maximum Price Amendment. For all required Construction Phase Services, the Construction Manager's Fee shall not exceed $_____, which is a fixed fee. Notwithstanding anything to the contrary herein, in the event Construction Manager fails to submit a Guaranteed Maximum Price proposal that is consistent with the Owner's Requirements or the Owner's budget, and Owner, in Owner's sole and absolute discretion, refrains from terminating the Contract pursuant to Article 13, then ten (10%) of the Construction Manager's Fee shall be forfeited by the Construction Manager and the Owner shall not be obligated to pay the Construction Manager ten (10%) of the Construction Manager's Fee stated herein.

**§ 6.1.3** The method of adjustment of the Construction Manager's Fee for changes in the Work:

There shall be no adjustment to the Construction Manager's Fee for changes in the Work after the GMP is agreed upon, until the value of cumulative Change Orders approved by the Owner exceeds 3% of the approved GMP Value. If the cumulative value of approved changes in the Work exceeds 3% of the approved GMP value, the Construction Manager will be allowed to include adjustment to Construction Manager's Fee (pursuant to Section 7.2.2 of A201-2017) for the portion of the Work in excess of the 3% of the approved GMP value. For example, if the agreed upon GMP amount for the Project is $33.33 Million, the Construction Manager's Fee will not be adjusted until the cumulative value of approved changes in Work reaches $1 Million after the GMP is approved. For this example, the Construction Manager is allowed to request adjustment to the Construction Manager's fee only for the portion of the changes in the Work in excess of $1 Million.

**§ 6.1.4** Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

See Section 7.2.2(G) of A201–2017.

**§ 6.1.5** Rental rates for Construction Manager-owned equipment shall not exceed percent ( %) of the standard rental rate paid at the place of the Project.

**§ 6.1.6** Liquidated damages, if any:
*(Insert terms and conditions for liquidated damages, if any.)*

The Construction Manager acknowledges and agrees that time is of the essence in achieving Substantial Completion and that a delay in achieving Substantial Completion will result in increased costs to the Owner. ln the event that the Construction Manager does not achieve Substantial Completion as stipulated in Article 1, including approved extensions, the Construction Manager and the Construction Manager's surety shall be liable for and shall pay liquidated damages to the Owner. For each calendar day required to achieve Substantial Completion beyond the Substantial Completion Date authorized by this Contract and the Contract Documents, the Construction Manager shall pay to the Owner all direct costs charged to the Owner, plus liquidated damages, and not as a penalty, on account of the Owner's staff expense and on account of student inconvenience, disruption, and dislocation the sum of $1,000.00 per day.

**§ 6.1.7** Other:
*(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)*

**§ 6.2 Guaranteed Maximum Price**

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.


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**§ 6.3 Changes in the Work**

**§ 6.3.1** The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

**§ 6.3.1.1** The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

**§ 6.3.2** Notwithstanding anything to the contrary set forth herein, Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may only be granted by advance written consent and approval Owner.

**§ 6.3.3** Adjustments to subcontracts awarded on the basis of a stipulated sum may only be granted by advance written approval by Owner. Adjustments to subcontracts awarded with the Owner's prior written consent and approval on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

**§ 6.3.4** In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

**§ 6.3.5** Intentionally deleted.

## ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

**§ 7.1 Costs to Be Reimbursed**

**§ 7.1.1** The term "Cost of the Work" shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7.

**§ 7.1.2** The Construction Manager has provided the Owner with a detailed itemization of all of the Construction Manager's General Conditions Costs in Attachment 1, which is incorporated herein by reference. Notwithstanding anything to the contrary in this Article 7 and throughout the Contract Documents, the total cost to the Owner for all of the Design-Builder's General Conditions Costs shall not exceed $_____ (as submitted by the Construction Manager on the bid form, and as further set forth in Attachment 1, unless agreed by written change order) and any amounts appropriated for General Conditions that are unused by the Construction Manager shall be applied as a credit for the benefit of the Owner.

**§ 7.1.3** Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain the Owner's approval prior to incurring the cost.

**§ 7.2 Intentionally deleted.**

*(Paragraphs deleted)*

**§ 7.3 Subcontract Costs**

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

**§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

**§ 7.4.1** Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

**§ 7.4.2** Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

**§ 7.5 Intentionally deleted.**


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*(Paragraphs deleted)*

**§ 7.6 Intentionally deleted.**

*(Paragraphs deleted)*

**§ 7.7 Intentionally deleted.**

*(Paragraphs deleted)*

**§ 7.8 Related Party Transactions**

**§ 7.8.1** For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

**§ 7.8.2** If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

**§ 7.9 Costs Not To Be Reimbursed**

Other than those reimbursable costs set forth in Sections 7.3 and 7.4, and Attachment 1, no other Costs of the Work performed by the Construction Manager shall be reimbursable from the Owner to the Construction Manager.

*(Paragraphs deleted)*

**ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS**

**§ 8.1** Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

**§ 8.2** Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

**ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS**

**§ 9.1** Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents.

**§ 9.1.1** When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the


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Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

**§ 9.2** Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement..

## ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of five years after final payment, or for such longer period as may be required by law.

## ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

### § 11.1 Progress Payments

**§ 11.1.1** Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

**§ 11.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

**§ 11.1.3** Provided that an Application for Payment is received by the Architect not later than the first day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the Twenty Fifth (25th) day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty ( 30 ) days after the Architect receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

**§ 11.1.4** With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

**§ 11.1.5** Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

**§ 11.1.5.1** The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

**§ 11.1.5.2** The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.


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**§ 11.1.5.3** When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect. Contingency allocations will require advance written approval from the Owner prior to their inclusion into Applications for Payment.

**§ 11.1.6** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

**§ 11.1.7** In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 11.1.7.1** The amount of each progress payment shall first include:

**.1** That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;

**.2** That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

; and

**.3** The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

**§ 11.1.7.2** The amount of each progress payment shall then be reduced by:

**.1** The aggregate of any amounts previously paid by the Owner;

**.2** The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;

**.3** Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;

**.4** For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;

**.5** The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

**.6** Retainage withheld pursuant to Section 11.1.8.

**§ 11.1.8 Retainage**

**§ 11.1.8.1** For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

5%

**§ 11.1.8.1.1** The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

Not used

**§ 11.1.8.2** Reduction or limitation of retainage, if any, shall be as follows:


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*(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)*

The Owner, at it's sole discretion, decide to reduce retainage amount to 3% when the cumulative completion of the project exceeds 50% of the total Guaranteed Maximum Price.

**§ 11.1.8.3** Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:
*(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)*

TBD

**§ 11.1.9** If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

**§ 11.1.10** Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

**§ 11.1.11** The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

**§ 11.1.12** In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

**§ 11.2 Final Payment**

**§ 11.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- **.1** the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- **.2** the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment;
- **.3** a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2; and
- .4 Construction Manager has complied with all requirements of Article 9 of AIA Document A201-2017.

**§ 11.2.2** Within five (5) years of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

**§ 11.2.2.1** If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

**§ 11.2.2.2** Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA


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Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

**§ 11.2.2.3** If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

**§ 11.2.3** The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

**§ 11.2.4** If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

**§ 11.3 Interest**

*(Paragraphs deleted)*

Intentionally deleted.

%

**ARTICLE 12 DISPUTE RESOLUTION**

**§ 12.1 Initial Decision Maker**

**§ 12.1.1** Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

**§ 12.1.2** The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

**§ 12.2 Binding Dispute Resolution**

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

[ ] Arbitration pursuant to Article 15 of AIA Document A201–2017

[ X ] Litigation in a court of competent jurisdiction



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[ ] Other: *(Specify)*

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

## ARTICLE 13 TERMINATION OR SUSPENSION

### § 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

**§ 13.1.1** If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager.

**§ 13.1.2** In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for 50% of Preconstruction Fees and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

**§ 13.1.3** Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

**§ 13.1.4** In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

**§ 13.1.5**
*(Paragraphs deleted)*
Intentionally deleted.

**§ 13.1.6** Intentionally deleted.

**§ 13.1.6.1** Intentionally deleted.

### § 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

**§ 13.2.1 Termination**

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

**§ 13.2.2 Termination by the Owner for Cause**

**§ 13.2.2.1** If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
.2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager' Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
.3 Subtract the aggregate of previous payments made by the Owner; and
.4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

**§ 13.2.2.2** The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal


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assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

**§ 13.2.3 Termination by the Owner for Convenience**

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

*(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)*

Only for the Cost of the Work incurred by the Construction Manager at the time of termination

**§ 13.3 Suspension**

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement. Notwithstanding anything to the contrary herein or in AIA Document A201-2017, the Work may be suspended by the Owner for up to 90 days due to a pandemic, including a subsequent outbreak of the COVID-19 virus without penalty and without increasing the Guaranteed Maximum Price.

## ARTICLE 14 MISCELLANEOUS PROVISIONS

**§ 14.1** Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 14.2 Successors and Assigns**

**§ 14.2.1** The Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 14.2.2** The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

**§ 14.3 Insurance and Bonds**

**§ 14.3.1 Preconstruction Phase**

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

*(Paragraphs deleted)*
*(Table deleted)*
*(Paragraphs deleted)*

**§ 14.3.2** The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201–2017.

*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2017.)*

**§ 14.3.3** Maryland Code 21-102 - A certificate of authority, or certified copy of a certificate of authority, issued by the Commissioner to a surety insurer shall be accepted as evidence of qualification to become sole surety on a bond, undertaking, recognizance, or other obligation required or allowed by law, or in the charter, ordinances, rules, or regulations of a municipal corporation, board, organization, court, judge, or public officer, without further proof or


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qualification regarding solvency, credit, or financial sufficiency to act as a surety or bidders may us bonding companies from Treasury approved sureties with an AM Best rating of A- or better rating.

**§ 14.3.4** The Contractor shall provide a Performance Bond with a Penal Sum equal to the Contract Sum. The Contractor shall provide a Payment Bond with a Penal Sum equal to the Contract Sum. All bonds shall be written on MD COMAR 21 07 02 10 Bond and will be from a surety company acceptable to the Owner.

**§ 14.3.5** The Contractor shall comply with the additional insurance requirements as set forth below:

**(a)** The Board of Education of Frederick County, Frederick County Council, the State of Maryland and the other entities stipulated by the Owner shall be named as an additional insured on the Contractor policies other than Worker's Compensation.

**(b)** All policies shall stipulate the Owner is to receive written notice thirty (30) days before cancellation.

**(c)** The Owner is to receive insurance certificates evidencing the compliance of insurance requirements at least (10) ten days before Work commences.

**(d)** Insurance policies shall contain a Waiver of Subrogation in favor of the Owner.

**(e)** General Liability and Umbrella Insurance policies are to be in "Occurrence Form".

**(f)** Insurance policies shall provide primary coverage to The Board of Education of Frederick County and Frederick County Council and the State of Maryland as additional insureds for loss, injury and damage arising out of or associated with the Work under this agreement as opposed to pro-rate with, concurrent with excess to any other insurance coverages by the Owner other than insurance Worker's Compensation Insurance.

**(g)** The Contractor shall purchase and maintain all insurance from an insurer acceptable to the Owner and lawfully authorized to do business in Maryland.

**§ 14.3.6** The Owner provides and maintains Builder's Risk Protection. The Contractor shall provide coverage for the first $2,500.00 for damages per occurrence. This provision shall not release the contractor of the obligation to complete the work according to plans and specifications required by the contract, and the contractor his/her Surety shall be obligated to full performance of the contract's undertaking.

**§ 14.3.7** The Contractor shall provide insurance pursuant to the requirements set forth below:

| **Type of Insurance or Bond** | **Limit of Liability or Bond Amount** |
|---|---|
| Part 1 Worker's Compensation Insurance | as required by statute |
| Part 2 Employers Liability: | |
| Bodily Injury by Accident | $ 500,000.00 each accident |
| Bodily Injury by Disease | $ 500,000.00 policy limits |
| Bodily Injury by Disease | $ 500,000.00 each employee |
| Commercial General Liability Insurance, to include, premises, products, completed operations, personal injury and contractual: Aggregate to apply Per Project./Per Location, Occurrence | $1,000,000.00 |
| Each Occurrence | $2,000,000.00 |
| General aggregate Limit (Per Site) | $2,000,000.00 aggregate limit |
| Products and complete operation | $1,000,000.00 each occurrence Limit |
| Personal & advertising injury | $1,000,000.00 |
| Fire damage | $ 50,000.00 |
| Medical Expense (Any One Person) | $ 10,000.00 each occurrence |
| General Liability insurance shall provide coverage for: | |
| Completed Operations to meet the Statute of Repose & Statute of Limitations; | |
| Independent Contractors | |
| Contractual Liability | |


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| | |
|---|---|
| Broad From Property Damage<br>Liability arising from Explosion, Collapse and Underground Damage (X, C, U)<br>Additional insured Endorsement (GL2010 11/85)<br>Terrorism-Certified & Non Certified | |
| Option (b1)<br>Automobile Liability Insurance, including owned, non-owned and hired vehicles<br>Bodily injury liability<br>Property damage liability | <br><br>$1,000,000.00 each person<br>$1,000,000.00 each occurrence |
| Option (b2)<br>Combined single limit Bodily injury or property damage liability | <br>$1,000,000.00 each person<br>$1,000,000.00 each accident |
| Umbrella Excess Liability (true following form) | $5,000,000.00 per Occurrence<br>$5,000,000.00 General Aggregate<br>$5,000,000.00 Products & Completed Operations |
| Any construction contractor providing Mass Grading, Masonry, Structural Steel, Superstructure or foundation concrete, Mechanical or Electrical contractors shall be required to carry the following Umbrella Excess Liability (true following form) minimum limits: | $8,000,000.00 Each Occurrence<br>$8,000,000.00 General Aggregate<br>$8,000,000.00 Products & Completed Operations |
| Contractors Pollution Liability for contractors engaged in testing for, monitoring, clean-up, removal, containing, detoxifying, neutralizing, transporting, handling, storage treatment, or disposing of or processing any waste pollutants. | $2,000,000.00 per Occurrence<br>$2,000,000.00 Aggregate |

*(Paragraphs deleted)*

**ARTICLE 15 SCOPE OF THE AGREEMENT**

**§ 15.1** This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

**§ 15.2** The following documents comprise the Agreement:

**.1** AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

**.2** AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed

**.3** Intentionally Deleted

**.4** AIA Document A201™–2017, General Conditions of the Contract for Construction as amended

**.5** Exhibit A Project Description

**.6** AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
*(Insert the date of the E203-2013 incorporated into this Agreement.)*

**.7** Other Exhibits:
*(Check all boxes that apply.)*

[ ] AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:
*(Insert the date of the E234-2019 incorporated into this Agreement.)*


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[ ] Supplementary and other Conditions of the Contract:

| Document | Title | Date | Pages |
|---|---|---|---|

.8 Other documents, if any, listed below:
*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

Attachment 1 Construction Manager's Reimbursable General Conditions

This Agreement is entered into as of the day and year first written above.

| | |
|---|---|
| **OWNER** *(Signature)* | **CONSTRUCTION MANAGER** *(Signature)* |
| Theresa R. Alban, Ph.D., Superintendent of Schools<br>*(Printed name and title)* | *(Printed name and title)* |

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# ATTACHMENT 1

Construction Manager's Reimbursable General Conditions

The Following describes all reimbursable General Conditions Costs to Construction Manager as limited by the not to exceed lump sum amount set forth below and as further limited by the requirements of the Agreement.

As-Built Drawings
Assistant Project Manager (if stationed at Project and properly allocated to the Project)
Assistant Project Superintendent
Auto Parking
Auto Truck Rental
Blueprint Plans/Specs
Liability and all other Insurance
Construction Clerk
Construction Protection
Drawings
Dumpsters
Equipment Rental not otherwise customarily performed by subcontractors
Estimating Costs (for major changes)
Expediting Costs
Expressage
Fax Machine
Field Office Furniture/Supplies
Final Clean-Up
First Aid & Ice
General labor (as necessary for the maintenance of the job site)
Hoist
Hoist Operator
Job Trailers
Legal Expense
Misc. Tools
Office Trailers
Payment and Performance Bonds
Postage/Shipping
Progress Photos
Project Accountant
Project Clean-Up
Project & Directional Design
Project Executive (if stationed at Project and properly allocated to the Project)
Project Manager (if stationed at Project and properly allocated to the Project)
Project Sign
Project Superintendent
Punch out
Safety - not otherwise customarily performed by subcontractors

Safety Equipment & Protection
Scheduling
Secretary/Administrative (if stationed at Project and properly allocated to the Project)
Security/Alarms
Senior Project Manager
Shop Drawings/Submittals/Copies
Temporary Electric Installation
Temporary Electric Temporary Electric Usage - until Substantial Completion
Temporary Fence
Temporary Heat/Cooling
Temporary Telephone Installation
Temporary Telephone Usage
Temporary Toilets
Temporary Water
Traffic Control & Barricades
Trailer Office Supplies
Trash Chute
Trash Removal
Travel and Subsistence Expense (as necessary for the Project)
Two-Way Radios
Weather Protection
Xerox Expense

**TOTAL GENERAL CONDITIONS NOT TO EXCEED $_____ (INCLUDING PAYMENT AND PERFORMANCE BONDS)**

# *Additions and Deletions Report for*
## *AIA® Document A133™ – 2019*

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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**PAGE 1**

The Board of Education of Frederick County,
a body corporate and politic of the State of Maryland
191 South East Street
Frederick, Maryland 21701-5918

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TBD

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**PAGE 2**

**EXHIBIT A PROJECT DESCRIPTION**
**EXHIBIT B GUARANTEED MAXIMUM PRICE AMENDMENT**
~~**EXHIBIT B INSURANCE AND BONDS**~~

...

**§ 1.1.1** The Owner's program for the ~~Project, as described in Section 4.1.1:~~
~~(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)~~Project shall be as identified in the draft or final education specification provided or as specified herein.:

**§ 1.1.1.1** The Project is described in the attached **Exhibit A Project Description**.

**§ 1.1.1.2** The design of the school or facility for this Project (the "Design") shall include all amenities to allow efficient functionality including, but not limited to signage, security system, computer network integration including servers, exterior lighting, sidewalks, landscaping and exterior features as required to obtain a site plan, interior design services, modular workstations, playing fields, roadways, parking areas, landscaping, storm water management systems, utilities, vehicular and pedestrian access and circulation and other items specified herein, and other services and items reasonably expected and incidental to delivering an elementary school building ready for occupancy. The Architect and the design team, as assembled and determined by the Architect, (the "Design Team") shall use commercially reasonable efforts to meet the desires of the "Design Guide: FCPS Standards for Design of New and Renovated Facilities" as amended, which states preferences for the Project, a copy of which shall be available to the Architect upon request, and shall be adopted and incorporated herein by reference. If preferences are found to be unadvisable or do not comply with the

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building and other relevant codes and regulations, the Design Team shall promptly bring this to the attention of the Owner.

**§ 1.1.1.3** Design and civil engineering services for the Project's entire site that meet and achieve all required approvals by applicable governmental agency or agencies having jurisdiction over the Project (the "**Applicable Governmental Authorities**").

**§ 1.1.1.4** The school or facility for the Project shall be heated and air-conditioned except for areas identified by the Owner in writing. The school or facility for the Project shall be equipped with a state of the art building automation system; the specific requirements for such will be coordinated between the Architect, the Construction Manager and the Owner's Maintenance and Operations Department.

**§ 1.1.1.5** The Construction Manager shall conform and/or provide construction and other services as stipulated in the appropriate Educational Specifications for the Project, Design Guide: FCPS Standards for the Design of New and Renovated Facilities, correspondence between the Owner and the Construction Manager for the purposes of the specific solicitation for services, written documentation and clarifications of interview discussions, and the latest edition or version of the "State of Maryland, Public School Construction Program, Administrative Procedures Guide."

**§ 1.1.1.7** Duties, responsibilities and limitations of authority of the Architect shall not be restricted, modified or extended beyond those set forth in this Agreement without written agreement of the Owner and the Construction Manager.

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New or totally renovated schools funded by the State of Maryland, or for which State funding may be requested, are required to achieve LEED Silver Certification. The Architect shall provide complete designs and specifications required to comply with LEED Silver Certification as a minimum requirement. The Architect shall prepare the Project charrette for the Project's scheduling meetings at the beginning of an integrative design

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process that sets the stage for cooperation and collaboration among all participants, including the Design Team, the Owner, the Construction Manager, and others involved in the Project. Early involvement of the entire Project team is fundamental to the successful use of a system approach to green building. The Architect shall address the Construction Manager's green building requirements in the bid documents such that Construction Manager's scope requirements are a known requirement to be included in the Guaranteed Maximum Price. The Design shall require services and construction materials supporting the LEED points identified and approved by the Owner as the charrette is being developed and modified during the Design process. The Construction Manager will be responsible for coordinating with the Architect for the construction phase LEED points throughout the design process. During the construction phase of the Project, the Construction Manager will be responsible for managing, tracking, and documenting as required for the Project to achieve the construction phase LEED Points.

...

**§ 1.1.6.1** If the Owner identifies a Sustainable Objective, other than as identified in Section 1.1.6 above, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

...

TBD

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The Frederick County Public Schools ("FCPS") Maintenance and Operations Departments,
The FCPS Facilities Services / Constriction Managements / Planning Department,
The FCPS Food Service Department,
The FCPS Transportation Department,
The FCPS Technology Services Department,
The FCPS Elementary or Secondary School Improvement, Instruction and Administration Departments, and
The applicable FCPS School Administration

**PAGE 5**

**.1** ~~Geotechnical Engineer:~~Inspection and Testing Agency:

TBD

~~**.2** Civil Engineer:~~**.2** Commissioning Agent:

TBD

...

- Third Party Constructability Reviewer
- Building Envelope Commissioning Consultant
- Other 3rd party Consultants as needed

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The Construction Manager acknowledges and agrees that time is of the essence and that failure to timely perform and complete the services under this Agreement will result in significant costs, expenses, and damages to the Owner, including but not limited to damages for loss of use and enjoyment, extended overhead and management costs, extra or extended services by the Construction Manager or other contractors, claims by design professionals, and possibly other types of costs, expenses and damages incurred by the Owner. Construction Manager is responsible to the Owner for all such costs, expenses and damages, including but not limited to both economic and noneconomic losses, and liquidated damages, to the extent caused by the Construction Manager or those for whom the Construction Manager has contracted or is otherwise responsible.

...

**§ 1.2** The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the ~~Owner and the Construction Manager shall appropriately~~ Owner, in its sole and absolute discretion, may adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. ~~The~~ In the event the Owner chooses to make such adjustement(s), the Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

**PAGE 6**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement and some of which may be issued after execution of this Agreement, other documents listed in this Agreement, and Drawings, Specifications, Addenda, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

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**3.1.3.1** The Construction Manager shall provide the following services relating to design and construction tasks:

**.1** The Construction Manager shall consult with, advise, assist, and provide recommendations to the Owner, the Architect and other members of the design team on all aspects of the planning and design of the Work.

**.2** The Construction Manager shall jointly schedule and attend regular meetings with the Architect and Owner's Authorized Representative. The Construction Manager shall consult with and advise the Owner and the Architect regarding site use and improvements, and the selection of materials, building systems and equipment.

**.3** The Construction Manager shall provide recommendations to the Owner and Architect, consistent with Project requirements, on construction feasibility and constructability; availability of materials and labor; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; prefabrication; and factors related to construction cost including, but not limited to, costs and estimates of alternative designs or materials, preliminary budgets and possible economies, life-cycle data, and possible cost reductions.

**.4** The Construction Manager shall review in-progress design documents, including the documents generally described in the industry as Schematic Design Documents, Design Development Documents, and Construction Documents and provide input and advice to eliminate areas of conflict, overlapping trade jurisdictions, and overlaps in the Work to be performed by the various subcontractors, and to endeavor to confirm that all Work has been included in the Contract Documents.

**.5** Construction Manager shall review completed Schematic Design Documents, Design Development Documents, and Construction Documents and suggest modifications whenever design details affect construction feasibility, schedules or cost in an effort to maintain the Project Budget and to improve completeness and clarity.

~~**§ 3.1.3.1** The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.~~

**§ 3.1.3.2** The Construction Manager shall ~~advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall~~ consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

**§ 3.1.3.3** The Construction Manager shall assist the Owner and ~~Architect~~ Architect, as determined to be necessary by Owner in Owner's sole and absolute discretion, in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

...

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The Construction Manager shall provide the following services related to the Project schedule:

.1 The Construction Manager shall prepare, and periodically update, a preliminary Project schedule for the Architect's and Owner's review and approval.

.2 The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services.

.3 The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Architect, and Construction Manager. As design proceeds, Construction Manager shall update the preliminary Project schedule to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price ("GMP") proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement, and Owner's occupancy requirements showing portions of the Project having occupancy priority, provided that the date(s) of Substantial Completion shall not be modified without Owner's prior written approval. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect



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The Construction Manager at Risk shall provide the following services relating to cost estimating:

.1 The Construction Manager shall within **fourteen (14) days** of Notice of Award prepare a Statement of Probable Construction Cost utilizing area, volume or similar conceptual estimating techniques for review by the Architect and approval by the Owner. The Statement of Probable Construction Cost shall include appropriate contingencies for design, bidding or negotiating, price escalation and market factors.

.2 When Schematic Design Documents have been prepared by the Architect, the Construction Manager shall, within **fourteen (14) days**, prepare a more detailed Statement of Probable Cost in a Level 1 Uniformat estimate or in another format approved by the Owner, for review by the Architect and approval by the Owner. During the preparation of the Design Development Documents, the Construction Manager shall, within **seven (7) days** update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

.3 When Design Development Documents have been prepared by the Architect, the Construction Manager shall, within **fourteen (14) days**, prepare a detailed Statement of Probable Construction Cost with supporting data in a Level 2 Uniformat estimate or other format approved by the Owner for review by the Architect and approval by the Owner. During the preparation of the Construction Documents, the Construction Manager shall, within **seven (7) days** update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

.4 If any Statement of Probable Construction Cost submitted to the Owner and Architect exceeds previously approved Statements of Probable Construction Cost or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Architect and Owner to reduce the Probable Construction Cost.

.5 Construction Manager shall notify the Owner, Architect and other members of the design team immediately if any construction cost estimate appears to be exceeding the construction budget.

.6 The Construction Manager shall work with the Architect and Owner to develop a GMP within the Target GMP (Or Owner's Budget) as stated in the Request for Proposals unless a change in the Target GMP (Or Owner's Budget) is approved by the Owner, in Owner's sole and absolute discretion. Upon completion of the Construction Documents, the Construction Manager shall, in consultation with the Architect, furnish to the Owner a final and detailed Level 3 UniFormat probable cost estimate, including local versus state funding in accordance with the Statewide Adequacy Standards and local match requirements.

**3.1.7** To accomplish the objective set for in paragraph 3.1.6.4 above, the Construction Manager shall provide consultation throughout the Preconstruction Phase including, but not limited to the furnishing of all necessary Value Engineering services. The object of the Value Engineering is to achieve optimum value for each construction dollar spent and keep the time of completion and cost of the Work within the time and fiscal constraints set forth in the Contract Documents. In cooperation with the Owner and the Architect, the Construction Manager shall:

.1 Formulate and evaluate alternative design, systems, and materials;

.2 Provide cost estimates of the alternatives to be evaluated. Cost estimates shall include industry standard operating and maintenance costs when appropriate to evaluate life-cycle costs of the alternatives;

.3 Evaluate the alternatives on the basis of costs, time schedules, availability of labor and materials and construction feasibility;

.4 Prepare written reports at the end of the Schematic Design Phase and the Design Development Phase summarizing the Value Engineering activities. The reports shall indicate each Value Engineering alternative considered, the cost estimate for the alternative, the cost to incorporate the alternative and whether or not the Owner and the Architect agreed to accept the alternative.

.5 In addition to the reports discussed in subsection 3.1.7.4 above, the Construction Manager shall maintain a running log of all Value Engineering alternatives considered throughout the entire preconstruction period. The log shall include the cost estimate for the alternative, the cost to incorporate the alternative and indicate whether or not the Owner and the Architect have agreed to incorporate the alternative.

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~~§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.~~

~~§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.~~

~~§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.~~

**PAGE 9**

§ 3.1.11.1 ~~If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the~~ After the Schematic Design, Design Development and Construction Documents are complete, the Construction Manager shall prepare bid packages and solicit price proposals for the Work in accordance with FCPS Bidding procedure, COMAR, and all other state of Maryland procurement regulations. The Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

...

.1 The Construction Manager shall seek to develop subcontractor and supplier interest in the Project, and shall furnish to the Owner and Architect for their information a list of possible subcontractors and suppliers, including suppliers who may furnish materials or equipment fabricated to a special design, from whom competitive bids, quotes, or proposals (collectively, "Offers") will be requested for each principal portion of the Work. Submission of such list is for information and discussion purposes only and not for prequalification.

.2 The Construction Manager shall provide input to the Owner and Architect and other members of the design team regarding current construction market bidding climate, status of key subcontract markets, and other local economic conditions. Construction Manager shall determine the division of work to facilitate bidding and award of trade contracts, considering such factors as bidding climate, improving or accelerating construction completion, minimizing trade jurisdictional disputes, and related issues. Construction Manager shall advise Owner on subcontracting opportunities for MBE businesses.

3.1.12 The Construction Manager shall recommend to the Owner and Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule, which shall be procured by the Construction Manager upon execution of either a GMP Amendment or Early Work Amendment covering such procurement, and approval of such schedule by the Owner. The Construction Manager shall expedite the delivery of long-lead time items.

3.1.13 The Construction Manager shall work with the Owner in identifying critical elements of the Work that may require special procurement processes, such as prequalification of Subcontractors or Material Suppliers or alternative contracting methods.

~~§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.~~

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~~§ 3.1.12 Procurement~~

~~The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.~~

~~§ 3.1.13 Compliance with Laws~~

~~The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.~~

~~§ 3.1.14 Other Preconstruction Services~~

~~Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document~~

~~*(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)*~~

§ 3.1.1.4 Procurement

The Construction Manager shall prepare bid packages and solicit price proposals for the Work in accordance with FCPS Bidding procedure, COMAR, and all other state of Maryland procurement regulations. The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. The Owner may agree to procure any items prior to the establishment of the Guaranteed Maximum Price. The Owner may also decide to bid certain bid packages directly to the subcontractor market. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for the items listed above to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.15 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 3.1.16 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

*(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)*

**§ 3.2.1** At a time to be ~~mutually agreed upon by the Owner and the Construction Manager, the Construction~~ selected by the Owner, in Owner's sole and absolute discretion, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's ~~estimate of the Cost of the Work,~~ Cost of the Work, the Construction Manager's Not To Exceed General Conditions amount (including insurance, and Payment and Performance Bond costs), as submitted on the Bid Form, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

**§ 3.2.2** To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents

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and reasonably inferable therefrom. ~~Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.~~

**PAGE 10**

.1 A list of the Drawings and Specifications, including all ~~Addenda thereto, and the Conditions of the Contract;~~addenda thereto, including conditions of the contract

**.2** The proposed Contract Sum, including a written statement of estimated cost organized by trade categories, allowances, contingencies, Construction Manager's Fee, and other items that comprise the Contract Sum;

~~**.2**~~ **.3** A list of the clarifications and assumptions made by the Construction ~~Manager~~ Manager, if any, in the preparation of the Guaranteed Maximum Price ~~proposal, including assumptions under Section 3.2.2;~~

~~**.3** A statement of the~~ **.4** The proposed Guaranteed Maximum Price, including a statement of the estimated Cost of ~~the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;~~Work organized by trade categories, allowances, contingency funds, Construction Manager's not to exceed General Conditions, Construction Manager's lump sum fee, and other items and the fees and costs that comprise the Guaranteed Maximum Price. All scopes of Work and Contract Sums set forth in the assigned Contractor Agreements shall be included in the Cost of the Work as part of the Guaranteed Maximum Price. The Construction Manager shall also include in its Guaranteed Maximum Price all costs for self-performed and/or other Contractor Work (not otherwise included in the Contractor Agreements);

**.5** The Construction Manager shall include a contingency fund ("Contingency Funds") in the Guaranteed Maximum Price to cover unforeseen conditions, Owner-generated requests, design errors/omissions, and charges related to gaps in the scope of Work as allocated among Contractors by the Construction Manager. In no event shall charges, including, but not limited to, charges relating to errors/omissions or delays chargeable to the Construction Manager or Project costs not approved in writing in advance by the Owner, be charged to any area of the contingency. The Contingency Fund shall be identified in the schedule of values as a separate line item. The Contingency Fund may be drawn upon by the Construction Manager to pay the cost of the Work provided if (1) the Construction Manager provides the Owner with a written explanation of each requested draw upon the Contingency Fund along with the back-up documentation requested by the Owner (2) the Owner provides written authorization of each requested draw upon the Contingency Fund, and (3) each Application for Payment contains a report aggregating the Construction Manager's use of the Contingency Fund. Any amount remaining in the Contingency Fund shall be kept by the Owner and the Construction Manager shall prepare a deductive Change Order reducing the Construction Manager's Guaranteed Maximum Price by the amounts remaining in the Contingency Fund, if any, prior to final payment;

~~**.4** The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based;~~ **.6** All construction and Project schedules upon which the Guaranteed Maximum Price is based, including, but not limited to, the Project Schedule and any preliminary schedules,

**.7** An enumeration of any qualifications and exclusions, if applicable; and

~~**.5** A date by which the Owner must accept the Guaranteed Maximum Price.~~**.8** A list of the Construction Manager's key personnel, Contractors and suppliers**.**

.

**§ 3.2.4** In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum ~~Price but not otherwise allocated to another line item or included in a Change Order.~~Price. Use of any contingency during the construction phase of the Project must be approved in writing by the Owner.

**PAGE 11**

**§ 3.2.6** If the Owner ~~notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price,~~ accepts the Guaranteed Maximum Price proposal , the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

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...

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all required and applicable sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

**PAGE 12**

§ 4.1.2 ~~Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.~~Intentionally deleted.

§ 4.1.3 ~~The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.~~Intentionally deleted.

...

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by ~~law and as otherwise agreed to by the parties,~~ law, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 ~~The~~ Within a reasonable time after receiving the same from the Architect, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The Owner, when such services are ~~requested,~~ deemed necessary by Owner and the Architect, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

**PAGE 13**

§ 4.2.1 ~~**Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.~~Intentionally deleted.

...

The Owner shall compensate and make progress payments to the Construction Manager in accordance with this Article 11 for Preconstruction Services performed prior to the execution of the Guaranteed Maximum Price Amendment. For all required Preconstruction Services, the Construction Manager's compensation shall not exceed $_____, which is a fixed fee that should include all Preconstruction Services costs for the Project (the "Preconstruction Fee"). The Preconstruction Fee shall be the Construction Manager's sole compensation for the Preconstruction Services for the Project. For Preconstruction Services, fifty percent (50%) of the total Preconstruction Fee shall be held by the Owner until the earlier to occur of the following: (1) the full execution of the Guarantee Maximum Price Amendment at which time the Owner shall release any retainage of the Preconstruction Fee to the Construction Manager; or (2) this Agreement is terminated pursuant to Section 13.l at which time the fifty percent

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(50%) retainage of the Preconstruction Fee shall be forfeited by the Construction Manager and the Owner shall no longer be obligated to pay the Construction Manager the fifty percent (50%) retainage of the Preconstruction Fee.
**§ 5.1.2** ~~The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.~~
~~*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*~~

| ~~Individual or Position~~ | ~~Rate~~ |
|---|---|

Intentionally deleted.
**§ 5.1.2.1** ~~Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.~~Intentionally deleted.

**§ 5.1.3** ~~If the Preconstruction Phase services covered by this Agreement have not been completed within ( ) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.~~Intentionally deleted.

...

**§ 5.2.1** Unless otherwise agreed, and except as otherwise provided in this Agreement, payments for services shall be made monthly in proportion to services performed.

**§ 5.2.2** ~~Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid ( ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.~~
~~*(Insert rate of monthly or annual interest agreed upon.)*~~

~~%~~
**PAGE 14**

The Owner shall compensate and make progress payments to the Construction Manager in accordance with this Article 11 for Construction Phase Services performed after execution of the Guaranteed Maximum Price Amendment. For all required Construction Phase Services, the Construction Manager's Fee shall not exceed $_____, which is a fixed fee. Notwithstanding anything to the contrary herein, in the event Construction Manager fails to submit a Guaranteed Maximum Price proposal that is consistent with the Owner's Requirements or the Owner's budget, and Owner, in Owner's sole and absolute discretion, refrains from terminating the Contract pursuant to Article 13, then ten (10%) of the Construction Manager's Fee shall be forfeited by the Construction Manager and the Owner shall not be obligated to pay the Construction Manager ten (10%) of the Construction Manager's Fee stated herein.

...

There shall be no adjustment to the Construction Manager's Fee for changes in the Work after the GMP is agreed upon, until the value of cumulative Change Orders approved by the Owner exceeds 3% of the approved GMP Value. If the cumulative value of approved changes in the Work exceeds 3% of the approved GMP value, the Construction Manager will be allowed to include adjustment to Construction Manager's Fee (pursuant to Section 7.2.2 of A201-2017) for the portion of the Work in excess of the 3% of the approved GMP value. For example, if the agreed upon GMP amount for the Project is $33.33 Million, the Construction Manager's Fee will not be adjusted until the cumulative value of approved changes in Work reaches $1 Million after the GMP is approved. For this example, the Construction Manager is allowed to request adjustment to the Construction Manager's fee only for the portion of the changes in the Work in excess of $1 Million.

...

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See Section 7.2.2(G) of A201–2017.

...

The Construction Manager acknowledges and agrees that time is of the essence in achieving Substantial Completion and that a delay in achieving Substantial Completion will result in increased costs to the Owner. In the event that the Construction Manager does not achieve Substantial Completion as stipulated in Article 1, including approved extensions, the Construction Manager and the Construction Manager's surety shall be liable for and shall pay liquidated damages to the Owner. For each calendar day required to achieve Substantial Completion beyond the Substantial Completion Date authorized by this Contract and the Contract Documents, the Construction Manager shall pay to the Owner all direct costs charged to the Owner, plus liquidated damages, and not as a penalty, on account of the Owner's staff expense and on account of student inconvenience, disruption, and dislocation the sum of $1,000.00 per day.

**PAGE 15**

**§ 6.3.2** Notwithstanding anything to the contrary set forth herein, Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may ~~be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.~~only be granted by advance written consent and approval Owner.

**§ 6.3.3** Adjustments to subcontracts awarded on the basis of a stipulated sum ~~shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement.~~ may only be granted by advance written approval by Owner. Adjustments to subcontracts awarded with the Owner's prior written consent and approval on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

...

**§ 6.3.5** ~~If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.~~Intentionally deleted.

...

**§ 7.1.1** The term ~~Cost~~ "Cost of the ~~Work~~ Work" shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in ~~Sections 7.1 through 7.7.~~this Article 7.

**§ 7.1.2** ~~Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.~~The Construction Manager has provided the Owner with a detailed itemization of all of the Construction Manager's General Conditions Costs in Attachment 1, which is incorporated herein by reference. Notwithstanding anything to the contrary in this Article 7 and throughout the Contract Documents, the total cost to the Owner for all of the Design-Builder's General Conditions Costs shall not exceed $_____ (as submitted by the Construction Manager on the bid form, and as further set forth in Attachment 1, unless agreed by written change order) and any amounts appropriated for General Conditions that are unused by the Construction Manager shall be applied as a credit for the benefit of the Owner.

**§ 7.1.3** ~~Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.~~Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain the Owner's approval prior to incurring the cost.

**§ 7.2 ~~Labor Costs~~Intentionally deleted.**

**~~§ 7.2.1~~** ~~Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.~~

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~~§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.~~

~~§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:~~
~~*(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)*~~

~~§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.~~

~~§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.~~

~~§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.~~

...

§ 7.5 ~~Costs of Other Materials and Equipment, Temporary Facilities and Related Items~~**Intentionally deleted.**

~~§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.~~

~~§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.~~

~~§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.~~

~~§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.~~

~~§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.~~

§ 7.6 ~~Miscellaneous Costs~~**Intentionally deleted.**
~~§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.~~

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~~§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.~~

~~§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.~~

~~§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.~~

~~§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.~~

~~§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.~~

~~§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.~~

~~§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.~~

~~§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.~~

~~§ 7.6.7 Costs of document reproductions and delivery charges.~~

~~§ 7.6.8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.~~

~~§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.~~

~~§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.~~

~~§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.~~

§ 7.7 ~~Other Costs and Emergencies~~**Intentionally deleted.**

~~§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.~~

~~§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.~~

~~§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of~~

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~~repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.~~

~~§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.~~

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Other than those reimbursable costs set forth in Sections 7.3 and 7.4, and Attachment 1, no other Costs of the Work performed by the Construction Manager shall be reimbursable from the Owner to the Construction Manager.

~~§ 7.9.1 The Cost of the Work shall not include the items listed below:~~

- ~~.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;~~
- ~~.2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;~~
- ~~.3 Expenses of the Construction Manager's principal office and offices other than the site office;~~
- ~~.4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;~~
- ~~.5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;~~
- ~~.6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;~~
- ~~.7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;~~
- ~~.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and~~
- ~~.9 Costs for services incurred during the Preconstruction Phase.~~

...

**§ 9.1** Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. ~~The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.~~

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**§ 9.2** Subcontracts or other agreements shall conform to the applicable payment provisions of this ~~Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.~~Agreement..

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...

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of ~~three~~ five years after final payment, or for such longer period as may be required by law.

...

**§ 11.1.3** Provided that an Application for Payment is received by the Architect not later than the first day of a month, the Owner shall make payment of the amount certified to the ~~Construction Manager~~ Contractor not later than the Twenty Fifth (25th) day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty ( 30 ) days after the Architect receives the Application for Payment.

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**§ 11.1.5.3** When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect. Contingency allocations will require advance written approval from the Owner prior to their inclusion into Applications for Payment.

...

~~.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; ;~~ and

~~.4~~ .3 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

...

5%

...

Not used

**PAGE 19**

The Owner, at it's sole discretion, decide to reduce retainage amount to 3% when the cumulative completion of the project exceeds 50% of the total Guaranteed Maximum Price.

...

TBD

...

**.2** the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; ~~and~~

**.3** a final Certificate for Payment has been issued by the Architect in accordance with Section ~~11.2.2.2.~~11.2.2.2; and

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.4 Construction Manager has complied with all requirements of Article 9 of AIA Document A201-2017.

**§ 11.2.2** Within ~~30 days~~ five (5) years of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

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~~Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~
~~*(Insert rate of interest agreed upon, if any.)*~~
Intentionally deleted.

...

[ X ] Litigation in a court of competent jurisdiction

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**§ 13.1.1** If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction ~~Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.~~Manager.

**§ 13.1.2** In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for ~~Preconstruction Phase services~~ 50% of Preconstruction Fees and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

...

**§ 13.1.5** ~~If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:~~

~~.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;~~

~~.2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and~~

~~.3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.~~Intentionally deleted.

**§ 13.1.6** ~~The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.~~Intentionally deleted.

**§ 13.1.6.1** ~~If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will~~

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~~terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.~~Intentionally deleted.

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Only for the Cost of the Work incurred by the Construction Manager at the time of termination

...

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement. Notwithstanding anything to the contrary herein or in AIA Document A201-2017, the Work may be suspended by the Owner for up to 90 days due to a pandemic, including a subsequent outbreak of the COVID-19 virus without penalty and without increasing the Guaranteed Maximum Price.

...

**§ 14.2.1** The ~~Owner and~~ Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

...

~~**§ 14.3.1.1** Commercial General Liability with policy limits of not less than ($ ) for each occurrence and ($ ) in the aggregate for bodily injury and property damage.~~

~~**§ 14.3.1.2** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than ($ ) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.~~

~~**§ 14.3.1.3** The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.~~

~~**§ 14.3.1.4** Workers' Compensation at statutory limits and Employers Liability with policy limits not less than ($ ) each accident, ($ ) each employee, and ($ ) policy limit.~~

~~**§ 14.3.1.5** Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than ($ ) per claim and ($ ) in the aggregate.~~

~~**§ 14.3.1.6 Other Insurance**~~

~~*(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)*~~

| ~~**Coverage**~~ | ~~**Limits**~~ |
|---|---|

~~**§ 14.3.1.7 Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella polices for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.~~

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~~§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.~~

§ 14.3.2 ~~Construction Phase~~

~~After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.~~The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201–2017.

*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2017.)*

**§ 14.3.3** Maryland Code 21-102 - A certificate of authority, or certified copy of a certificate of authority, issued by the Commissioner to a surety insurer shall be accepted as evidence of qualification to become sole surety on a bond, undertaking, recognizance, or other obligation required or allowed by law, or in the charter, ordinances, rules, or regulations of a municipal corporation, board, organization, court, judge, or public officer, without further proof or qualification regarding solvency, credit, or financial sufficiency to act as a surety or bidders may us bonding companies from Treasury approved sureties with an AM Best rating of A- or better rating.

**§ 14.3.4** The Contractor shall provide a Performance Bond with a Penal Sum equal to the Contract Sum. The Contractor shall provide a Payment Bond with a Penal Sum equal to the Contract Sum. All bonds shall be written on MD COMAR 21 07 02 10 Bond and will be from a surety company acceptable to the Owner.

**§ 14.3.5** The Contractor shall comply with the additional insurance requirements as set forth below:

**(a)** The Board of Education of Frederick County, Frederick County Council, the State of Maryland and the other entities stipulated by the Owner shall be named as an additional insured on the Contractor policies other than Worker's Compensation.

**(b)** All policies shall stipulate the Owner is to receive written notice thirty (30) days before cancellation.

**(c)** The Owner is to receive insurance certificates evidencing the compliance of insurance requirements at least (10) ten days before Work commences.

**(d)** Insurance policies shall contain a Waiver of Subrogation in favor of the Owner.

**(e)** General Liability and Umbrella Insurance policies are to be in "Occurrence Form".

**(f)** Insurance policies shall provide primary coverage to The Board of Education of Frederick County and Frederick County Council and the State of Maryland as additional insureds for loss, injury and damage arising out of or associated with the Work under this agreement as opposed to pro-rate with, concurrent with excess to any other insurance coverages by the Owner other than insurance Worker's Compensation Insurance.

**(g)** The Contractor shall purchase and maintain all insurance from an insurer acceptable to the Owner and lawfully authorized to do business in Maryland.

**§ 14.3.6** The Owner provides and maintains Builder's Risk Protection. The Contractor shall provide coverage for the first $2,500.00 for damages per occurrence. This provision shall not release the contractor of the obligation to complete the work according to plans and specifications required by the contract, and the contractor his/her Surety shall be obligated to full performance of the contract's undertaking.

**§ 14.3.7** The Contractor shall provide insurance pursuant to the requirements set forth below:

| Type of Insurance or Bond | Limit of Liability or Bond Amount |
|---|---|
| Part 1 Worker's Compensation Insurance | as required by statute |
| Part 2 Employers Liability: | |
| Bodily Injury by Accident | $ 500,000.00 each accident |

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| | |
|---|---|
| Bodily Injury by Disease | $ 500,000.00 policy limits |
| Bodily Injury by Disease | $ 500,000.00 each employee |
| Commercial General Liability Insurance, to include, premises, products, completed operations, personal injury and contractual: Aggregate to apply Per Project./Per Location, Occurrence | $1,000,000.00 |
| Each Occurrence | $2,000,000.00 |
| General aggregate Limit (Per Site) | $2,000,000.00 aggregate limit |
| Products and complete operation | $1,000,000.00 each occurrence Limit |
| Personal & advertising injury | $1,000,000.00 |
| Fire damage | $ 50,000.00 |
| Medical Expense (Any One Person) | $ 10,000.00 each occurrence |
| General Liability insurance shall provide coverage for: | |
| Completed Operations to meet the Statute of Repose & Statute of Limitations; | |
| Independent Contractors | |
| Contractual Liability | |
| Broad From Property Damage | |
| Liability arising from Explosion, Collapse and Underground Damage (X, C, U) | |
| Additional insured Endorsement (GL2010 11/85) | |
| Terrorism-Certified & Non Certified | |
| Option (b1) | |
| Automobile Liability Insurance, including owned, non-owned and hired vehicles | |
| Bodily injury liability | $1,000,000.00 each person |
| Property damage liability | $1,000,000.00 each occurrence |
| Option (b2) | |
| Combined single limit Bodily injury or property damage liability | $1,000,000.00 each person<br>$1,000,000.00 each accident |
| Umbrella Excess Liability (true following form) | $5,000,000.00 per Occurrence<br>$5,000,000.00 General Aggregate<br>$5,000,000.00 Products & Completed Operations |
| Any construction contractor providing Mass Grading, Masonry, Structural Steel, Superstructure or foundation concrete, Mechanical or Electrical contractors shall be required to carry the following Umbrella Excess Liability (true following form) minimum limits: | $8,000,000.00 Each Occurrence<br>$8,000,000.00 General Aggregate<br>$8,000,000.00 Products & Completed Operations |
| Contractors Pollution Liability for contractors engaged in testing for, monitoring, clean-up, removal, containing, detoxifying, neutralizing, transporting, handling, storage treatment, or disposing of or processing any waste pollutants. | $2,000,000.00 per Occurrence<br>$2,000,000.00 Aggregate |

~~**§ 14.3.2.1** The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.~~

~~**§ 14.4** Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:~~
~~*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*~~

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~~§ 14.5 Other provisions:~~

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~~.3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds~~Intentionally Deleted

.4 AIA Document A201™–2017, General Conditions of the Contract for Construction as amended

.5 Exhibit A Project Description

.6 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

...

~~.6~~ .7 Other Exhibits:

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~~.7~~ .8 Other documents, if any, listed below:

...

Attachment 1 Construction Manager's Reimbursable General Conditions

...

Theresa R. Alban, Ph.D., Superintendent of Schools

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*AIA® Document D401™ – 2003*

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_____

*(Signed)*

_____

*(Title)*

_____

*(Dated)*

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# AIA® Document A201® – 2017

## *General Conditions of the Contract for Construction*

**for the following PROJECT:**
*(Name and location or address)*

Construction Management Services

**THE OWNER:**
*(Name, legal status and address)*

The Board of Education of Frederick County
191 South East Street
Frederick, Maryland 21701-5918

**THE ARCHITECT:**
*(Name, legal status and address)*

**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

#### § 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. As specifically enumerated in the Agreement, the Contract Documents shall include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

#### § 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### § 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### § 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

#### § 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

#### § 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### § 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under the Architect respective professional services agreements with the Owner. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials. As the design progresses and payments to the Architect are made by the Owner the instruments of services become the property of The Board of Education of Frederick County, see 1.5.1 Ownership and Use of Drawings, Specifications and Other Instrument of Service.

#### § 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

### § 1.2 Correlation and Intent of the Contract Documents

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by


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one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

1. The Agreement
2. Addenda with those or late date having precedence over those of earlier date
3. The Supplementary Conditions
4. The General Conditions of the Contract for Construction
5. The Contract Specifications
6. The Contract Drawings

**§ 1.2.1.1** The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

**§ 1.2.2** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

**§ 1.2.3** Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

### § 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

### § 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### § 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

**§ 1.5.1** The Architect and the Architect's consultants shall be deemed the authors of the respective Instruments of Service, including the Drawings and Specifications, and The Board of Education of Frederick County will own and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and materials or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors, and material and equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner.

### § 1.6 Notice

**§ 1.6.1** Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.


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**§ 1.6.2** Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

### § 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if included in the AIA B101-2009 Standard Form of Agreement Between Owner and Architect, to establish the protocols for the development, use, transmission, and exchange of digital data.

### § 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, if included in AIA B101-2009 Standard Form of Agreement Between Owner and Architect, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## ARTICLE 2 OWNER

### § 2.1 General

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. The Architect does not have authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization.

**§ 2.1.2** The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

**§**
*(Paragraphs Deleted)*

**2.1.3 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Fees for trade and specialty permits, including but not limited to, electrical, plumbing, elevator, fire review(s) and inspection, boiler, pressure vessel and fuel burning permits and all reinspections shall be paid by and at the Contractor's expense.**

**§ 2.1.4** The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

**§ 2.1.5** If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

**§ 2.1.6** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project which are known to the Owner, and a legal description of the site if requested by the Contractor. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner and shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.1.7** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control


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and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

**§ 2.1.8** Unless otherwise provided in the Contract or Bidding Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

**§ 2.2 Owner's Right to Stop the Work**

**§ 2.2.1** If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

**§ 2.2.2**

**If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to or waiver of other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.**

## ARTICLE 3 CONTRACTOR

**§ 3.1 General**

**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents.

**§ 3.1.3** The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner or the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

**§ 3.2 Review of Contract Documents and Field Conditions by Contractor**

**§ 3.2.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. The Contractor represents that it has received all information it needs concerning the conditions of the Project site. The Contractor represents that it has inspected the location of the Work and has satisfied itself as to the condition thereof or unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents. Based upon the foregoing inspections, understandings, agreements and acknowledgements, the Contractor agrees and acknowledges that the Contract Sum is just and reasonable compensation for all the Work and that the Work shall not result in any lateral or vertical movement of any structure due to the Contractor's construction activities. The Contractor shall exercise special care in executing Subsurface Work in proximity of subsurface utilities, improvements and easements.

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as


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the information furnished by the Owner pursuant to Section 2.1.6, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report in writing to the Architect and Owner any errors, inconsistencies or omissions discovered by or in the exercise of due diligence should have been discovered or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without providing written notice to the Owner and Architect, the Contractor shall assume appropriate responsibility for such performance and shall bear the costs for correction.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect in writing any nonconformity discovered by or in the exercise of due diligence should have been discovered or made known to the Contractor as a request for information in such form as the Architect may require.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

### § 3.3 Supervision and Construction Procedures

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as state below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

**§ 3.3.3** The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### § 3.4 Labor and Materials

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.


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**§ 3.4.2** Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

**§ 3.4.4 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner or the Architect or of other Contractors during the performance of the Work or by Tests, inspections or approvals required or performed by persons other than the Contractor, including inspections or approvals performed by the Owner's personnel or by any public authority.**

### § 3.5 Warranty

**§ 3.5.1** The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 3.5.2** The Minimum Warranty period will be two (2) years from the date of substantial completion of the project. The Warranty shall include extended warranty period(s) available from equipment manufacturers and/or extended warranties as required by project specification are required as if individually enumerated herein.

**§ 3.5.2 Notwithstanding any other contract provisions to the contrary, the mechanical system and plumbing system must be completely balanced and such balance reports must be reviewed and accepted by the Engineer before the warranty/guarantee period will begin.**

### § 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### § 3.7 Permits, Fees, Notices and Compliance with Laws

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections and reinspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. Fees for trade and a specialty permit including, but not limited to, electrical, plumbing, elevator, fire review(s), inspections and reinspections, boiler, pressure vessel and fuel burning permits, shall be paid by and at Contractor's expense.

**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. Compliance with local governing jurisdiction requirements shall be completed at no additional cost to the Owner.

**§ 3.7.3** If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. The provisions of this Agreement regarding compensation and damages, including delay damages, shall apply.


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### § 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### § 3.8 Allowances

**§ 3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

- **.1** allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- **.2** Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- **.3** whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### § 3.9 Superintendent and Project Manager

**§ 3.9.1** The Contractor shall employ a competent superintendent, project manager and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Communications shall be confirmed in writing. The Superintendent and necessary staff members shall be in attendance at the Project site during the performance of the Work including completion of all Punch List items.

**§ 3.9.2 Prior to being assigned to the Project both the Project Manager and Superintendent shall be subject to the approval of the Owner. Once approved, the Superintendent and Project Manager will not be removed from the Project without the Owner's written consent. The Owner reserves and retains the right, as its sole and absolute discretion, to order the Contractor to replace any of the Contractor's employees. In the event the Owner requests Contractor employee's removal, the Contractor shall promptly replace such employees with competent replacements satisfactory to the Owner. The Contractor shall not change the Superintendent or Project Manager without the Owner's consent.**


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**§ 3.9.3** The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

### § 3.10 Contractor's Construction and Submittal Schedules

**§ 3.10.1** The Contractor, promptly after being awarded the Contract and as a condition precedent to the first Application For Payment, shall prepare submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

**§ 3.10.2** The Contractor shall prepare a preliminary construction and submittal schedule, within 14 days after being awarded the Contract and complete schedules before 60 contract days have elapsed. The Contractors shall update the schedules thereafter as necessary to maintain current construction and submittal schedules, and shall submit the schedules for the Architect's and Owner's review. The Architect's and Owner's review shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. Contractor's Construction Schedule shall be in a Critical Path Method (CPM) and bar chart format, indicating sufficient detail, task(s) (the work) and duration(s) (start and completion) of each major item of the Work, the current status of each major item of Work indicating staffing and equipment to comply with the Contract Substantial Completion Date and any Owner approved extensions. Contractor's shall provide additional detail when requested by the Architect or Owner and update their Proposed Contractor Schedule to be compliant with the Contract Substantial Date(s). Within 7 days of a request by the Architect or Owner, the Contractor shall furnish to the Owner and Architect a Progress Schedule showing the current progress and the completion stage of the Work as compared to the Original Contract Schedule. Project Schedules shall clearly identify any item of Work, which is behind Schedule along with the Contractor's increased manpower and equipment necessary to comply with the Contract Schedule including any time extensions approved by the Owner. Progress Schedule(s) shall be provided in a Critical Path Method (CPM), bar chart format and electronic as requested by the Owner. During the Owner's review, the Owner may choose to advise the Contractor of work that will be performed by the Owner's forces or the Owner's separate Contractor. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals. The Contractor shall provide the Owner and Architect updated schedules as a condition precedent to progress payments. The updated schedules shall be provided by the Contractor as the project progresses and as requested by the Owner or Architect.

**§ 3.10.3** The Contractor shall perform the Work in accordance with the most recent schedules reviewed by the Owner and Architect without objections.

### § 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed. The Owner may request, and Contractor shall provide, at any time during the course of the Project, Asbuilt Drawings that reflect the then current stage of construction as actually built and submitted to the Owner for its review. If such drawings are not provided, the Owner may withhold progress payment, or at its discretion a portion thereof, until the requested drawings are up to date and provided for the Owner's review.

### § 3.12 Shop Drawings, Product Data and Samples

**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.


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**§ 3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**§ 3.12.3** Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

**§ 3.12.4** Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. The Contractor shall submit shop drawings to the Architect for all structural elements of the Work and all other portions of the work required by the Contract Documents. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

**§ 3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.
If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, who signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals provided the Owner and Architect have specified to


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the Contractor all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. Pursuant to the Section 3.12.10, the Architects will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

**§ 3.12.10.1** If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

### § 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### § 3.14 Cutting and Patching

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, the Contractor's consent to cutting or otherwise altering the Work.

### § 3.15 Cleaning Up

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

### § 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

### § 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

### § 3.18 Indemnification

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages,


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losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder including but not limited to the contributing negligence of such party to be indemnified. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

## ARTICLE 4 ARCHITECT

### § 4.1 General

**§ 4.1.1** The Architect is the person or entity retained by the Owner pursuant to Section 2.1.4 and identified as such in the Agreement.

**§ 4.1.2** Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

### § 4.2 Administration of the Contract

**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

**§ 4.2.2** The duties of the Architect shall be governed by the Agreement between the Owner and the Architect, and will review the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents., except as provided in Section 3.3.1. Notwithstanding other provisions in this Agreement to the contrary, for the purpose of effectuating the Architect's duties in this section, the Architect shall be responsible for exercising reasonable care and diligence in observing ongoing Work. No inspection or approval or failure to inspect or approve by the Architect shall relieve the Contractor from complying in all respects with the requirements of the Contract Documents.

**§ 4.2.3** On the basis of the site visits, the Architect will report to the Owner and copy the Contractor about the progress and quality of the portion of the Work completed reporting (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

**§**
**4.2.3.1 Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect, for additional services which may be charges by the Architect for additional site visits made necessary by the fault or neglect of the Contractor.**


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**§ 4.2.4 Communications**

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

**§ 4.2.5** Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

**§ 4.2.6** The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 4.2.7** The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of reviewing the adequacy of the structural elements of the building and checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences, or procedures. The Architect's review of a specific item shall not indicate approval of an assembly of which the item is a component. Should any local Government authorities require certification or correctness of any structural shop drawings by the Architect of record, the Architect will sign and certify the shop drawings only after the shop drawings have been signed and certified by both the structural engineer and other professional engineer registered in the State of Maryland on behalf of the manufacturer, fabricator, Subcontractor or Contractor. The cost for such additional engineering certification shall be borne by the Contractor.

**§ 4.2.8** The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

**§ 4.2.9** The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive, review and forward to the Owner with comments, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10. Architect's inspection and issuance of a certificate for final payment and Owner's payment shall not relieve Contractor of responsibility for defects in the Work.

**§ 4.2.10** If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

**§ 4.2.11** The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.


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**§ 4.2.12** Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

**§ 4.2.13** The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

**§ 4.2.14** The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

**§ 5.1.1** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

**§ 5.1.2** A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### § 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

**§ 5.2.1** Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

**§ 5.2.2** The Contractor shall not contract or propose to contract with a proposed person, entity or subcontractor unless the Contractor is satisfied that such person, entity or Subcontractor is technically and financially qualified to perform the Work as a Subcontractor in accordance with the Contractor Documents. The Contractor shall not Contract with any entity or persons to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

**§ 5.2.3** If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

**§ 5.2.4** The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

**§ 5.2.5 The Contractor shall not enter into any Subcontract, Contract agreement, purchase order or other arrangement for the furnishing of any portion of the materials, services, equipment or Work with any party or entity as such party or entity is an affiliated entity with which the Contractor has a direct or indirect ownership, control or interest unless such Agreement has been approved by the Owner after full disclosure in writing by the Contractor to the Owner of such affiliation or relationship and all details relating to the proposed arrangements.**


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### § 5.3 Subcontractual Relations

By appropriate written agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work which the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

### § 5.4 Contingent Assignment of Subcontracts

**§ 5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

**.1** assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and

**.2** assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

**§ 5.4.2** Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

**§ 5.4.3** Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

### § 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

**§ 6.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims a delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

**§ 6.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

**§ 6.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.


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**§ 6.1.4** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall be deemed to be subject to the same obligations and rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

### § 6.2 Mutual Responsibility

**§ 6.2.1** The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect and Owner apparent discrepancies or defects in such other construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

**§ 6.2.3** The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

**§ 6.2.4** The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

**§ 6.2.5** The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### § 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

**§ 7.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. The Contractor agrees that it will incorporate the provisions of Article 7 in its entirety into all agreements with lower tier Contractors. It is further understood and agreed that these Change Order pricing provisions, apply to all types of Contracts, Subcontracts and purchases. The Owner and Owner's accountant shall be afforded access to Contractor's records, books, and correspondence, instructions, drawings, receipts, Subcontracts, purchase orders, vouchers and any other data relating to the Project as necessary to verify the cost of any change, including wages and benefits paid, for which compensation is sought under this Agreement.

**§ 7.1.2** A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone. Verbal notification approving the Contractor to proceed with a change in the work shall be confirmed in a written format via, CCD, Change Order, progress minutes, e-mail or other written correspondence and should be made as soon as practical.

**§ 7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive


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or order for a minor change in the Work. A Change Order or Construction Change Directive involving unit costs shall be equitably adjusted in accordance with 7.3.4

**§ 7.2 Change Orders**

**§ 7.2.1** A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

**.1** The change in the Work;

**.2** The amount of the adjustment, if any, in the Contract Sum; and

**.3** The extent of the adjustment, if any, in the Contract Time; and

**.4 Comply with all requirements of 7.2.2 below and 7.3.4.**

No Change Order shall exceed any of the limitations and requirements of the Contract Documents.

**§ 7.2.2** The Contractor shall comply with the following regarding Changes:

(A) A Notice or Request for Change must comply with all of the following:

.1 specifically and in detail describe the nature and cause of the Claim; and

.2 specifically reference the detail(s) on the plans and the specification section(s) that are affected; and

.3 contain an estimate of the increase or decrease in the cost to the Owner; and

.4 include supporting documentation that satisfactorily justifies to the Owner overhead, profit, insurance, sales or payroll taxes and incorporate a detailed quantity survey of all Work added and deleted; and

.5 be submitted in a format acceptable to the Owner.

(B) Additive Changes must comply with the following Mark-Up schedule for Overhead, profit and bond:

If the Cost of the proposed change is $0.00 to $4,999.99, the total combined overhead, profit and bond must not exceed 20%.

If the Cost of the proposed change is $5,000.00 to $14,999.99, the combined overhead, profit and bond must not exceed 15%.

If the Cost of the proposed change is $15,000.00 to $24,999.99, the combined overhead, profit and bond must not exceed 10%.

If the Cost of the proposed change is $25,000.00 to $49,999.99, the combined overhead, profit and bond must not exceed 7%.

If the Cost of the proposed change is over $50,000.00, the combined overhead, profit and bond will be negotiated but will not exceed 5%, the cost of the bond shall be clearly indicated in the detailed proposal regardless of the proposed cost.

(C) The Contractors' markup of Subcontractor Work and supplier's material(s) shall not exceed 7% for changes up to $24,999.99 and the markup shall be negotiated for changes over $25,000.00 but shall not exceed 5% of the Subcontractor(s) cost of the Work.

(D) Overhead cost shall include all the general conditions, expenses, including but not limited to, all coordination, calculations, engineering, field and office supervision, field and office rent utilities, telephone and communications expenses, office supplies, clean-up, debris expenses, administration and preparation. When both additions and deletions are involved in any one change, the allowance for overhead, profit and bond shall be computed on the net increase, if any, with respect to the change.

(E) For decreases in the Work or credits, the Contract Amount shall be decreased 100% of the Scheduled Value of the deleted Work plus overhead, profit and bond. Contractor and Subcontractor(s) credits shall include credit for overhead, profit and Bond, in the same percentages allowed for additive changes in the above mark-up schedule:

(F) The Contractor's total charge to the Owner for the use of equipment owned in whole or in part by the Contractor, its Owners, directors, officers, shareholders, or affiliated or related persons or entities shall consider the rate agreed upon between the Contractor, Owner and Architect at the beginning of the project less operator and fuel. Reference materials such as "the AED Green Book" should be used to establish market rental rates for equipment. The following shall apply;

.1 The appropriate duration of hourly rate shall be calculated based on the entire duration the piece of equipment is on the FCPS site (e.g. if the equipment item has been on the project for 30 days or more the hourly rate shall be the monthly rental divided by 176 hours; if on the project for one week the hourly rental shall be the weekly rental divided by 40; if on the project for a day the hourly rental shall be the daily rental divided by 8; if brought to the project for the specific operation the minimal rental period shall apply.) Minimal rental durations will be considered for equipment rented for specific project purposes,


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.2 The Contractor shall not invoice for delivery or removal of the equipment to or from the job site,
.3 In no event shall the total payment paid by the Owner on any such piece of equipment exceed fifty percent (50%) of its purchase price.

(G) Subcontractor(s) shall comply with the requirements specified above for the Contractor regarding Changes.

**§ 7.3 Construction Change Directives**

**§ 7.3.1** A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

**§ 7.3.2** A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

**§ 7.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

**.1** Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
**.2** Unit prices stated in the Contract Documents or subsequently agreed upon;
**.3** Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
**.4** As provided in Section 7.3.4.

**§ 7.3.4** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

**.1** Wages for construction Workers, including supervisors directly employed to perform the construction of the Work at the site. Unless otherwise agreed by Addendum to this Contract, labor burden shall be limited to: social security, old age and employment, workmen's compensation, health and life insurance benefits, sick leave, holidays, military leave, vacation and pension and savings plan benefits; insurance, and other employee costs approved by the Architect;
**.2** Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
**.3** Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
**.4** Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
**.5** Additional costs of supervision and field office personnel directly attributable to the change, provided, however, the Contractor shall provide an itemized breakdown showing quantities, unit costs, hours and rates of labor, and other costs and such detail as may be required to allow the reasonableness of cost to the established. Similar cost information covering Subcontractors" Work shall be included as part of the Contractor's Proposal. Minimum charges for "handling' will not be acceptable. The allowable overhead and profit mark-ups to be included in the total cost to Owner shall be based on paragraph 7.2 and:

.1 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of the costs including labor, materials, and Subcontractors. Labor and materials shall be itemized in the manner prescribed above. Where major costs items are Subcontracts, they shall be itemized also. In no case will a charge involving over $500.00 be approved without such itemization.

.2 A Change Order must include each of the items listed in this Article 7. In the event that there is no change in the Contract time or Contract amount, it must be noted that no such change is intended. A


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Change Order is all-inclusive, that is, a Change Order, must indicate the change in Contract amount, including any overhead and profit. The Contractor cannot later request additional sums for a prior Change Order because it did not include overhead, profit, or similar items. If additional Contract time is indicated on the Change Order and the Contractor intends to claim any costs for time on any basis, the Change Order must include all additional costs, if any, associated with the additional time.

.3 Where both additions and credits are involved in any one Change Order the allowance of overhead and profit shall be figured on the basis of the net increase, if any.

**§ 7.3.5** If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

**§ 7.3.6** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

**§ 7.3.7** A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

**§ 7.3.8** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect and the credit shall be as required by Article 7 mark-up schedule. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change per the mark-up schedule.

**§ 7.3.9** Pending final determination of the actual cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any potion of such costs that remain in dispute, a Claim may be made in accordance with Article 15.

**§ 7.3.10** When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order otherwise, if Contractor is directed to proceed by Owner, the matter shall be considered a Claim under Article 15. Change Orders may be issued for all or any part of a Construction Change Directive.

### § 7.4 Minor Changes in the Work

The Architect with the consent of the Owner has the authority to order minor changes in the work not involving adjustment in the Contract Sum or extension the Contract Time and not inconsistent with intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

## ARTICLE 8 TIME

### § 8.1 Definitions

**§ 8.1.1** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

**§ 8.1.2** The date of commencement of the Work is the date established in the Agreement shall be fixed in a Notice to Proceed.

**§ 8.1.3** The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

**§ 8.1.4** The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.


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### § 8.2 Progress and Completion

**§ 8.2.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

**§ 8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and the Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

**§ 8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

### § 8.3 Delays and Extensions of Time

**§ 8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a Separate Contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and with consent of the Owner; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Contractor waives any and all rights to any increased payments for delay damages, whether by Change Order or otherwise, to include overhead, extended overhead, extended general conditions, or for any other delay-based amounts of any kind or nature, for any delay by reason of the events referred to in the subparagraph or any other event of any kind or nature. Contractor's remedy is limited to an extension of time as set forth herein.

**§ 8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Article 15.

*(Paragraph Deleted)*

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

**§ 9.1.1** The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

**§ 9.1.2** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

### § 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect and Owner, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require. This schedule, unless objected to the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. The Schedule of Values shall be revised from time to time as may be necessary and due to the issuance of Change Orders or Construction Change Directives, the Contractor shall revised the Schedule of Values as requested by the Architect or Owner. The Owner reserves the right to request the Contractor to provide additional detail substantiating the Schedule of Values.

**§ 9.2.2 The Contractor shall include a line item in the Schedule of Values for production of project record documents. The minimum value established for the record documents must not be less than 1/2 % of the total Contract value including accepted alternates.**

### § 9.3 Applications for Payment

**§ 9.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect and Owner an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such applications shall be notarized and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies


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of requisitions from Subcontractors and material suppliers, and shall reflect retainage as provided for in the Contract Documents. Applications for Payment shall be based upon the Schedule of Values and shall be in a form and content satisfactory to the Owner. Each Application for Payment shall be accompanied by the following:

.1 Contractor's application and Cost Certification Statement, AIA Forms 702, 703 and IAC PSCP Form No. 306.4, with attachment "G" Certified Minority Business Enterprise Participation Standard Monthly Contractor's Requisition for Payment" (current form), and;

.2 A statement from the Contractor that all items of construction for which payment is sought have been incorporated into the Project where properly stored in accordance with the Contract Documents, and;

.3 The Contractors and applicable Subcontractors Release of Liens and Waivers of Claim and such other documents that the Owner may require after discussion with the Contractor, and;

.4 Such other documentation that the Owner, Construction Manager, Architect may reasonably require after discussion with contractor.

**§ 9.3.1.1** As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work.

### § 9.4 Certificates for Payment

**§ 9.4.1** The Architect will, after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor for such amount as the Architect determines in properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certifications in whole or in part as provided by in Section 9.5.1.

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to


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substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

### § 9.5 Decisions to Withhold Certification

**§ 9.5.1** The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- **.1** defective Work not remedied;
- **.2** third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- **.3** failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- **.4** reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- **.5** damage to the Owner or a Separate Contractor;
- **.6** reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- **.7** repeated failure to carry out the Work in accordance with the Contract Documents.

**§ 9.5.2** When above reasons for withholding certifications are removed, certification will be made for amounts previously withheld after the Contractor revises and resubmits a current Application for Payment including such amounts that were previously withheld.

**§ 9.5.3** When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§ 9.5.4** If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on its next Certificate for Payment.

**§ 9.5.5 If the Contractor disputes any determination by the Architect or Owner with regard to any Applications for Payment, the Contractor shall nevertheless expeditiously continue to perform the Work and shall make claim as provided in Article 15.**

**§ 9.5.6 The Owner shall not be deemed to be in breach of this Contract by reason of the withholding of any payment pursuant to any provision of the Contract Documents provided the Architect has approved the Owner's action, or the Work for which payment is being withheld has been rejected by any governmental authority.**

### § 9.6 Progress Payments

**§ 9.6.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

**§ 9.6.2** The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.


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**§ 9.6.3** The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

**§ 9.6.4** The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

**§ 9.6.5** The Contractor's payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

**§ 9.6.6** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

**§ 9.6.7** Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

**§ 9.6.8** Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

### § 9.7 Failure of Payment

Subject to other provisions in the Contract Documents, if the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within thirty days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within thirty days after the date established in the Contract Documents, the amount certified by the Architect, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's substantiated direct costs of shut-down. Article 9.7 shall not apply to Change Orders that have not received formal approval by the Board of Education of Frederick County, all such Change Orders shall not be included in Applications for Payment until the Contractor received formal notification from the Owner that the Change Order has received formal approval by the Board of Education of Frederick County and the Contractor has completed the Change Order work.

### § 9.8 Substantial Completion

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**§ 9.8.3** The comprehensive list of items to be completed or corrected ("Contractor's Punch List") prepared by the Contractor shall be submitted to the Owner and the Architect and the Owner shall be notified of inspections and be


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entitled to have an Owner's representative present at such inspections. All items that are disclosed during inspections not complying with the Contract Documents shall be added to the Contractor's Punch List and a copy of the Amended Punch List shall be submitted to the Owner and the Contractor. Any Certificate of Substantial Completion shall then be submitted making reference to the Punch List item, as either being completed to the Architect's satisfaction or shall fix a time within which the Contractor shall complete any remaining items. In the event the Contractor's Punch List is not completed by the date set forth in the Certificate of Substantial Completion, Owner has the option of deducting from balances due the Contractor an amount sufficient to compensate Owner for the cost of completing the Punch List. The amount to be deducted shall be determined in the sole discretion of Owner. Alternatively, Owner at its sole discretion may proceed to engage another Contractor to complete the Punch List Work with the cost thereof to include Owner's administrative costs, which costs shall be calculated in the sole discretion of the Owner, to be deducted from the amount retained and if the amount retained is insufficient, the Contractor is responsible to reimburse Owner the full amount of the uncovered cost. To the extent that multiple inspections may be required to determine whether the Work, or a designated portion thereof has attained Substantial Completion, the Owner shall be entitled to deduct from the Contract Sum any amounts which it must pay to the Architect for additional services for such additional inspections.

**§ 9.8.4** When the Work or designated portion thereof including Record Documents and Maintenance Manuals are substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work provided the Contractor has completed all other contractual requirement stipulated to begin the warranty periord or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

### § 9.9 Partial Occupancy or Use

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

### § 9.10 Final Completion and Final Payment

**§ 9.10.1** Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information


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and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither retainage payments nor final payment shall become due until all documents required by the Contract Documents and Article 5 of AIA 101 Standard Form of Agreement Between Owner and Contractor including all (a) Maintenance Manuals, (b) Record Documents, (c) Instruction and Demonstrations have been provided and the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days, prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and, (5) other data establishing payment or satisfaction of obligations such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorney fees.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

**§ 9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- **.1** liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- **.2** failure of the Work to comply with the requirements of the Contract Documents;
- **.3** terms of special warranties required by the Contract Documents; or
- **.4** audits performed by the Owner, if permitted by the Contract Documents, after final payment.

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

### § 10.2 Safety of Persons and Property

**§ 10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- **.1** employees on the Work and other persons who may be affected thereby;
- **.2** the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- **.3** other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.


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**§ 10.2.2** The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

**§ 10.2.3** The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

**§ 10.2.4** When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall give the Owner reasonable advance notice and exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**§ 10.2.4.1** If the Contract Documents require the Contractor to handle materials or substances that under certain circumstances may be designated as hazardous, the Contractor shall handle such materials in an appropriate manner and shall defend, indemnify, and hold Owner and Architect harmless from and against all claims, liabilities, suits, losses and damages arising out of or relating to such materials.

**§ 10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

**§ 10.2.6** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

**§ 10.2.7** The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

**§ 10.2.8 Injury or Damage to Person or Property**

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

**§ 10.3 Hazardous Materials and Substances**

**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

**§ 10.3.2** Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect


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will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

**§ 10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

**§ 10.3.4** The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

**§ 10.3.5** The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

**§ 10.3.6** If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

### § 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

## ARTICLE 11 INSURANCE AND BONDS

### § 11.1 Contractor's Insurance and Bonds

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

**§ 11.1.2** The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

**§ 11.1.3** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

**§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation


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or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

**§ 11.2 Owner's Insurance**

**§ 11.2.1** The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

**§ 11.2.2 Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

**§ 11.3 Waivers of Subrogation**

**§ 11.3.1** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

**§ 11.3.2** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.


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**§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance**
The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

**§11.5 Adjustment and Settlement of Insured Loss**
**§ 11.5.1** A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

**§ 12.1 Uncovering of Work**
**§ 12.1.1** If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs. The cost to repair nonconforming work shall be considered a latent defect and the contractor responsible for the work or as appropriate the damage to the work shall be responsible for the cost to make repairs to said work and return the uncovered work to the condition before the work was uncovered.

**§ 12.2 Correction of Work**
**§ 12.2.1 Before Substantial Completion**
The Contractor and its surety shall have the right to remedy any defects in the Work on materials which shall appear within a period of two (2) year from the date of Substantial Completion. Upon written notice from the Owner, the Contractor and surety shall promptly provide said remedy after notice from the Owner. If said remedy is not promptly provided, the Owner shall have the right to correct said defects and charge the Contractor and its surety for the same.

**§ 12.2.2 After Substantial Completion**
**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within two-years after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously


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given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the two-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within five working days after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4. If the Contractor does not proceed with correction of such nonconforming Work within five working days fixed by written notice from the Architect the Owner may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within three days after written notice, the Owner may upon ten additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Owner's and Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

**§ 12.2.2.2** The two-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

**§ 12.2.2.3** The two-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

**§ 12.2.3** The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

**§ 12.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

**§ 12.2.5** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the two-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### § 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules.

### § 13.2 Successors and Assigns

**§ 13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

### § 13.2.2 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or


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certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

**§ 13.3 Rights and Remedies**

**§ 13.3.1** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

**§ 13.3.2** No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

**§ 13.4 Tests and Inspections**

**§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

**§ 13.4.2** If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

**§ 13.4.3** If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

**§ 13.4.4** Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

**§ 13.4.5** If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

**§ 13.4.6** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

**§ 13.4.7** No tests or inspections or results thereof shall constitute an acceptance of any Work not conforming to the requirements of Contract Documents.

**§ 13.5 Interest**

**§ 13.5.1** Interest payments will not be required for late payments under the terms of this Contract.

**§ 13.6 TIME LIMITS ON CLAIMS**

**§ 13.6.1** Commencement of Statutory Limitations Period and Statute of Repose shall be in accordance with the laws of the State of Maryland.


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## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 120 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

**.1** Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

**.2** An act of government, such as a declaration of national emergency, that requires all Work to be stopped;

**.3** Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

*(Paragraph Deleted)*

**§ 14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, under direct or indirect contract with the Contractor, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment as set forth in the provisions of this Agreement regarding termination by the Owner for convenience.

### § 14.2 Termination by the Owner for Cause

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

**.1** refuses or fails to supply enough properly skilled workers or proper materials;

**.2** fails to make payment to Subcontractors or suppliers for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;

**.3** disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

**.4** otherwise is guilty of substantial breach of a provision of the Contract Documents.

**§ 14.2.2** When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

**.1** Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

**.2** Accept assignment of subcontracts pursuant to Section 5.4; and

**.3** Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**§ 14.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**§ 14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.


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**§ 14.2.5** In the event that is adjusted that the Owner's termination for cause is not justified, then the Termination shall be deemed to be a termination by the Owner for convenience and the Contractor shall be entitled to compensation as only set forth in the provisions of this Agreement regarding termination by Owner for Convenience.

**§ 14.3 Suspension by the Owner for Convenience**

**§ 14.3.1** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

**§ 14.3.2** The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

**.1** that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or

**.2** that an equitable adjustment is made or denied under another provision of the Contract.

**§ 14.4 Termination by the Owner for Convenience**

**§ 14.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. At its option the Owner may terminate this Contract in whole or from time to time in part at any time by written notice thereof to the Contractor. Upon any such termination, Contractor agrees to waive any claims for damages, including loss of anticipated profits, on account thereof, and as the sole right and remedy of the Contractor, Owner shall pay Contractor in accordance with 14.4.2 below. The provisions of the Contract, which by their nature survive final acceptance of the Work, shall remain in full force and effect after such termination to include but not limited to warranties and obligations for the correction of Work not confirming to the Contract Documents. Upon receipt of the Termination Notice, Contractor shall, unless the Notice direct otherwise, immediately discontinue the Work and, to the extent specified in the Notice, place no further orders or subcontracts for materials, equipment, services, or facilities and shall promptly make every reasonable effort to procure cancellation of such orders or subcontracts upon terms satisfactory to the Owner and shall thereafter do only such Work and perform such services as may be directed by the Owner as necessary to preserve and protect Work already in progress and to protect materials, plans and equipment on the Site or in transit thereto. Upon such termination, the obligations of the Contractor shall continue as to portions of the Work already performed and as to bona fide obligations assumed by the Contractor prior to the date of termination.

**§ 14.4.2** Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

**.1** cease operations as directed by the Owner in the notice;

**.2** take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

**.3** except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

**§ 14.4.3** Upon Termination for Convenience, the provisions of the Contract, which by their nature, survive any final acceptance of the Work, shall remain in full force and effect after such termination to include but not limited to warranties and obligations for the correction of Work not conforming to the Contract Documents. Upon receipt of the Termination Notice, Contractor shall, unless the Notice directs otherwise, immediately discontinue the Work and, to the extent specified in the Notice, place no future orders or Subcontracts for materials, equipment, services or facilities and shall promptly make every reasonable effort to procure cancellation of such orders or Subcontracts upon terms satisfactory to the Owner and shall thereafter do only such Work and perform such services as may be directed by the Owner as necessary to preserve and protect Work already in progress and to protect materials, plant and equipment on the site or in transit thereto. Upon termination, Contractor shall be entitled to be paid the full cost of all Work properly done by Contractor on account of the portion of Work Performed. If at the date of such termination, Contractor has properly prepared or fabricated off the site any goods for subsequent incorporation in the Work, and if Contractor delivers such goods to the Site or to such other place as the Owner shall reasonably direct, then Contractor shall be paid for such goods or materials. No other payment shall be made by reason of damages or otherwise, including but not limited to loss of anticipated profits, overhead, or any other claim or amount whatsoever.


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## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

#### § 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

#### § 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

#### § 15.1.3 Notice of Claims

**§ 15.1.3.** Claims by the Contractor must be made by written notice to the Owner and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by Contractor must be made within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later. Contractor claim(s) shall not be valid unless made in strict accordance with this subparagraph.

**§ 15.1.3.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

#### § 15.1.4 Continuing Contract Performance

**§ 15.1.4.1** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

**§ 15.1.4.2** The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

#### § 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. A Claim must be processed as defined herein, Article 15 and comply with all requirements of Article 7.

#### § 15.1.6 Claims for Additional Time

**§ 15.1.6.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. No claim for delay damages of any kind or nature shall be valid and no such damages shall be paid by the Owner except upon Owner's written consent which consent is in the sole and absolute discretion of the Owner. No written consent by Owner to damages for one period of delay, entitle Contractor to damages for any other period of delay. A Claim for additional time must be for adverse weather conditions and the actual conditions must exceed the cumulative monthly adverse weather day totals indicated in 15.1.5.2.

**§ 15.1.6.2** If adverse weather conditions are the basis for a Claim for additional time, the time must exceed the time as defined in the schedule below, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, exceeded the schedule below and could not have been reasonably anticipated


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and had an adverse effect on the scheduled construction. The State of Maryland, Department of General Services, Special Provisions Section of Hagerstown, Maryland will be used in the calculation of the monthly anticipated adverse weather delays. The monthly-anticipated adverse weather delays are as follows, in workdays. The Contractor's schedule must reflect these anticipated adverse weather delay days in weather dependent activities:

| Jan | Feb | March | April | May | June | July | Aug | Sept | Oct | Nov | Dec |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 8 | 7 | 7 | 8 | 8 | 7 | 5 | 6 | 4 | 6 | 5 | 5 |

In any event, Contractor's Claim(s) for delay in the performance of the Work due to adverse weather conditions is strictly limited to a Claim for additional for additional time only. In no event shall the Contractor be entitled to monetary damages or any other compensation as a result of a delay in the performance of the Work due to adverse weather conditions.

**§ 15.1.7 Waiver of Claims for Consequential Damages**

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

**.1** damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

**.2** damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

**§ 15.2 Initial Decision**

**§ 15.2.1** Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim . Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 15.2.2** The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

**§ 15.2.3** In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

**§ 15.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

**§ 15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision


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Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be subject to mediation and, if the parties fail to resolve their dispute through mediation the claim shall be resolved by litigation.

**§ 15.2.6** Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

**§ 15.2.6.1** Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue litigation with respect to the initial decision.

**§ 15.2.7** In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**§ 15.2.8** If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

**§ 15.3 Mediation**

**§ 15.3.1** Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

**§ 15.3.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

**§ 15.3.3** Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

**§ 15.3.4** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**§ 15.4 Arbitration**

**§ 15.4.1** All disputes and other matters in question between the parties to this Agreement which cannot be resolved by the parties in accordance with the terms of this Agreement shall be referred to legal counsel and resolved in the Circuit Court for Frederick County, Maryland and all parties hereto agree to submit themselves to the jurisdiction of that Court. During any legal proceedings or other dispute resolution proceedings which may be
agreed to between the parties, Owner and Contractor shall
*(Paragraph Deleted)*

comply with sub-paragraph 4.74.


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## *AIA® Document A201® – 2017*

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**PAGE 1**

Construction Management Services
The Board of Education of Frederick County
191 South East Street
Frederick, Maryland 21701-5918

**PAGE 10**

**ARTICLE 1 GENERAL PROVISIONS**

...

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. ~~Unless~~ As specifically enumerated in the Agreement, the Contract Documents ~~do not~~ shall include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

...

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under ~~their respective professional services agreements.~~ the Architect respective professional services agreements with the Owner. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials. As the design progresses and payments to the Architect are made by the Owner the instruments of services become the property of The Board of Education of Frederick County, see 1.5.1 Ownership and Use of Drawings, Specifications and Other Instrument of Service.

...

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section ~~15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.~~15.2 and certify termination of the Agreement under Section 14.2.2.

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**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

1. The Agreement
2. Addenda with those or late date having precedence over those of earlier date
3. The Supplementary Conditions
4. The General Conditions of the Contract for Construction
5. The Contract Specifications
6. The Contract Drawings

...

**§ 1.5.1** The Architect and the Architect's consultants shall be deemed the authors ~~and owners of their~~ of the respective Instruments of Service, including the Drawings and Specifications, and The Board of Education of Frederick County will own and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and materials or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

...

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors, and material and equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the ~~Owner, Architect, and the Architect's consultants.~~Owner.

**PAGE 12**

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if included in the AIA B101-2009 Standard Form of Agreement Between Owner and Architect, to establish the protocols for the development, use, transmission, and exchange of digital data.

...

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, if included in AIA B101-2009 Standard Form of Agreement Between Owner and Architect, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

...

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization.

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~~Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.~~The Architect does not have authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization.

...

**~~§ 2.2 Evidence of the Owner's Financial Arrangements~~**

...

**~~§ 2.2.1~~** ~~Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.~~

...

**~~§ 2.2.2~~** ~~Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.~~

...

**~~§ 2.2.3~~** ~~After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.~~

...

**~~§ 2.2.4~~** ~~Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.~~

...

**~~§ 2.3 Information and Services Required of the Owner~~**

...

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**~~§ 2.3.1~~ 2.1.3 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing ~~facilities.~~facilities. Fees for trade and specialty permits, including but not limited to, electrical, plumbing, elevator, fire review(s) and inspection, boiler, pressure vessel and fuel burning permits and all reinspections shall be paid by and at the Contractor's expense.**

**...**

**§ ~~2.3.2~~ 2.1.4** The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

**...**

**§ ~~2.3.3~~ 2.1.5** If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

**...**

**§ ~~2.3.4~~ 2.1.6** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the ~~Project,~~ Project which are known to the Owner, and a legal description of the ~~site.~~ site if requested by the Contractor. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner ~~but~~ and shall exercise proper precautions relating to the safe performance of the Work.

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**§ ~~2.3.5~~ 2.1.7** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

**...**

**§ ~~2.3.6~~ 2.1.8** Unless otherwise provided in the Contract or Bidding Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

**...**

**§ ~~2.4~~ 2.2 Owner's Right to Stop the Work**

**...**

**§ 2.2.1** If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or ~~repeatedly~~ fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

**...**

**~~§ 2.5 Owner's Right to Carry Out the Work~~**

**...**

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**2.2.2**

...

**If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ~~ten-day~~ three-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to or waiver of other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.**

...

**§ 3.1.3** The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner or the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

...

**§ 3.2.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become ~~generally~~ familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. The Contractor represents that it has received all information it needs concerning the conditions of the Project site. The Contractor represents that it has inspected the location of the Work and has satisfied itself as to the condition thereof or unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents. Based upon the foregoing inspections, understandings, agreements and acknowledgements, the Contractor agrees and acknowledges that the Contract Sum is just and reasonable compensation for all the Work and that the Work shall not result in any lateral or vertical movement of any structure due to the Contractor's construction activities. The Contractor shall exercise special care in executing Subsurface Work in proximity of subsurface utilities, improvements and easements.

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**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section ~~2.3.4,~~ 2.1.6, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report in writing to the Architect and Owner any errors, inconsistencies or omissions discovered by or in the exercise of due diligence should have been discovered or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without providing written notice to the Owner and Architect, the Contractor shall assume appropriate responsibility for such performance and shall bear the costs for correction.

...

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor

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shall promptly report to the Architect in writing any nonconformity discovered by or in the exercise of due diligence should have been discovered or made known to the Contractor as a request for information in such form as the Architect may require.

...

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the ~~Contract.~~ Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof ~~and shall be~~ and, except as state below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

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**§ 3.4.4 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner or the Architect or of other Contractors during the performance of the Work or by Tests, inspections or approvals required or performed by persons other than the Contractor, including inspections or approvals performed by the Owner's personnel or by any public authority.**

...

**§ 3.5.2** ~~All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable.~~ The Minimum Warranty period will be two (2) years from the date of substantial completion of the project. The Warranty shall include extended warranty period(s) available from equipment manufacturers and/or extended warranties as required by project specification are required as if individually enumerated herein.

...

~~**to the** Owner, **and** shall commence in accordance with Section 9.8.4.~~**§ 3.5.2 Notwithstanding any other contract provisions to the contrary, the mechanical system and plumbing system must be completely balanced and such balance reports must be reviewed and accepted by the Engineer before the warranty/guarantee period will begin.**

...

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections and reinspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. Fees for trade and a specialty permit including, but not limited to, electrical, plumbing, elevator, fire review(s), inspections and reinspections, boiler, pressure vessel and fuel burning permits, shall be paid by and at Contractor's expense.

...

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**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. Compliance with local governing jurisdiction requirements shall be completed at no additional cost to the Owner.

**...**

**§ 3.7.3** If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. The provisions of this Agreement regarding compensation and damages, including delay damages, shall apply.

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If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and ~~Contractor,~~ Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

**...**

**§ 3.9 Superintendent and Project Manager**

**...**

**§ 3.9.1** The Contractor shall employ a competent ~~superintendent~~ superintendent, project manager and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Communications shall be confirmed in writing. The Superintendent and necessary staff members shall be in attendance at the Project site during the performance of the Work including completion of all Punch List items.

**...**

**§ 3.9.2** ~~The Contractor, as soon as practicable after award of **the** Contract, shall notify **the** Owner **and** Architect of **the** name and qualifications of a proposed superintendent. Within 14 days of receipt **of the** information, **the** Architect may notify **the** Contractor, stating whether **the Owner** or **the** Architect (1) has reasonable objection **to the** proposed superintendent or (2) requires additional time for review. Failure **of the** Architect **to** provide notice within **the** 14-day period **shall** constitute notice of no reasonable objection.~~**Prior to being assigned to the Project both the Project Manager and Superintendent shall be subject to the approval of the Owner. Once approved, the Superintendent and Project Manager will not be removed from the Project without the Owner's written consent. The Owner reserves and retains the right, as its sole and absolute discretion, to order the Contractor to replace any of the Contractor's employees. In the event the Owner requests Contractor employee's removal, the Contractor shall promptly replace such employees with competent replacements satisfactory to the Owner. The Contractor shall not change the Superintendent or Project Manager without the Owner's consent.**

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**§ 3.10.1** The Contractor, promptly after being awarded the ~~Contract, shall~~ Contract and as a condition precedent to the first Application For Payment, shall prepare submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

...

**§ 3.10.2** The ~~Contractor, promptly~~ Contractor shall prepare a preliminary construction and submittal schedule, within 14 days after being awarded the Contract and ~~thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably~~ complete schedules before 60 contract days have elapsed. The Contractors shall update the schedules thereafter as necessary to maintain current construction and submittal schedules, and shall submit the schedules for the Architect's and Owner's review. The Architect's and Owner's review shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. ~~If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved~~ Contractor's Construction Schedule shall be in a Critical Path Method (CPM) and bar chart format, indicating sufficient detail, task(s) (the work) and duration(s) (start and completion) of each major item of the Work, the current status of each major item of Work indicating staffing and equipment to comply with the Contract Substantial Completion Date and any Owner approved extensions. Contractor's shall provide additional detail when requested by the Architect or Owner and update their Proposed Contractor Schedule to be compliant with the Contract Substantial Date(s). Within 7 days of a request by the Architect or Owner, the Contractor shall furnish to the Owner and Architect a Progress Schedule showing the current progress and the completion stage of the Work as compared to the Original Contract Schedule. Project Schedules shall clearly identify any item of Work, which is behind Schedule along with the Contractor's increased manpower and equipment necessary to comply with the Contract Schedule including any time extensions approved by the Owner. Progress Schedule(s) shall be provided in a Critical Path Method (CPM), bar chart format and electronic as requested by the Owner. During the Owner's review, the Owner may choose to advise the Contractor of work that will be performed by the Owner's forces or the Owner's separate Contractor. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals. The Contractor shall provide the Owner and Architect updated schedules as a condition precedent to progress payments. The updated schedules shall be provided by the Contractor as the project progresses and as requested by the Owner or Architect.

...

**§ 3.10.3** The Contractor shall perform the Work in ~~general~~ accordance with the most recent schedules ~~submitted to the Owner and Architect.~~reviewed by the Owner and Architect without objections.

...

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be ~~in electronic form or paper copy,~~ available to the Architect ~~and Owner,~~ and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed. The Owner may request, and Contractor shall provide, at any time during the course of the Project, Asbuilt Drawings that reflect the then current stage of construction as actually built and submitted to the Owner for its review. If such drawings are not provided, the Owner may withhold progress payment, or at its discretion a portion thereof, until the requested drawings are up to date and provided for the Owner's review.



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**§ 3.12.4** Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate ~~how~~ the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. The Contractor shall submit shop drawings to the Architect for all structural elements of the Work and all other portions of the work required by the Contract Documents. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

...

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

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~~**§ 3.12.10.1**~~ If professional design services or certifications by a design professional related to systems, ~~materials,~~ materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and ~~the~~ Architect will specify all performance and design criteria that such services must satisfy. ~~The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents.~~ The Contractor shall cause such services or certifications to be provided by ~~an appropriately licensed design professional, whose~~ a properly licensed design professional, who signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop ~~Drawings,~~ Drawings and other submittals prepared by such professional. Shop ~~Drawings,~~ Drawings and other submittals related to the ~~Work,~~ Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and ~~the~~ Architect shall be entitled to rely upon the ~~adequacy and accuracy of the services, certifications,~~ adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design ~~professionals,~~ professionals provided the Owner and Architect have specified to the Contractor ~~the~~ all performance and design criteria that such services must satisfy. ~~Pursuant to this Section 3.12.10, the Architect will review and~~ The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. Pursuant to the Section 3.12.10, the Architects will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

...

**§ ~~3.12.10.2~~ 3.12.10.1** If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

...

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor

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except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, ~~its~~ the Contractor's consent to cutting or otherwise altering the Work.

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**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified ~~hereunder.~~ hereunder including but not limited to the contributing negligence of such party to be indemnified. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

...

**§ 4.1.1** The Architect is the person or entity retained by the Owner pursuant to Section ~~2.3.2~~ 2.1.4 and identified as such in the Agreement.

...

**§ 4.2.2** The ~~Architect will visit~~ duties of the Architect shall be governed by the Agreement between the Owner and the Architect, and will review the site at intervals appropriate to the stage of ~~construction, or as otherwise agreed with the Owner,~~ construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. ~~However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.~~ The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents., except as provided in Section 3.3.1. Notwithstanding other provisions in this Agreement to the contrary, for the purpose of effectuating the Architect's duties in this section, the Architect shall be responsible for exercising reasonable care and diligence in observing ongoing Work. No inspection or approval or failure to inspect or approve by the Architect shall relieve the Contractor from complying in all respects with the requirements of the Contract Documents.

...

**§ 4.2.3** On the basis of the site visits, the Architect will ~~keep the Owner reasonably informed~~ report to the Owner and copy the Contractor about the progress and quality of the portion of the Work ~~completed, and promptly report to the Owner~~ completed reporting (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

...

**§** ~~4.2.4 Communications~~

...

~~The **Owner** and Contractor **shall** include **the** Architect in all communications that relate **to** or affect **the** Architect's **services** or professional responsibilities. The Owner shall promptly notify **the Architect of the** substance of any~~

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**4.2.3.1 Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect, for additional services which may be charges by the Architect for additional site visits made necessary by the fault or neglect of the Contractor.**

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**§ 4.2.4 Communications**

...

~~direct communications between the Owner and the Contractor otherwise relating to the Project.~~ Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

...

**§ 4.2.6** The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

...

**§ 4.2.7** The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of reviewing the adequacy of the structural elements of the building and checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions ~~or~~ or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences, or procedures. The Architect's ~~approval~~ review of a specific item shall not indicate approval of an assembly of which the item is a component. Should any local Government authorities require certification or correctness of any structural shop drawings by the Architect of record, the Architect will sign and certify the shop drawings only after the shop drawings have been signed and certified by both the structural engineer and other professional engineer registered in the State of Maryland on behalf of the manufacturer, fabricator, Subcontractor or Contractor. The cost for such additional engineering certification shall be borne by the Contractor.

...

**§ 4.2.9** The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; ~~receive~~ receive, review and forward to the ~~Owner,~~ Owner with comments, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final

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Certificate for Payment pursuant to Section 9.10. Architect's inspection and issuance of a certificate for final payment and Owner's payment shall not relieve Contractor of responsibility for defects in the Work.

...

**§ 4.2.10** If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The ~~Owner shall notify the Contractor of any change in the~~ duties, responsibilities and limitations of authority of ~~the Project representatives.~~such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

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**§ 5.2.1** Unless otherwise stated in the Contract ~~Documents,~~ Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall ~~notify the Owner and Architect~~ furnish in writing to the Owner through the Architect the names of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

...

**§ 5.2.2** The Contractor shall not ~~contract with a proposed person or entity~~ contract or propose to contract with a proposed person, entity or subcontractor unless the Contractor is satisfied that such person, entity or Subcontractor is technically and financially qualified to perform the Work as a Subcontractor in accordance with the Contractor Documents. The Contractor shall not Contract with any entity or persons to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

...

**§ 5.2.5 The Contractor shall not enter into any Subcontract, Contract agreement, purchase order or other arrangement for the furnishing of any portion of the materials, services, equipment or Work with any party or entity as such party or entity is an affiliated entity with which the Contractor has a direct or indirect ownership, control or interest unless such Agreement has been approved by the Owner after full disclosure in writing by the Contractor to the Owner of such affiliation or relationship and all details relating to the proposed arrangements.**

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By appropriate written agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work ~~that~~ which the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

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...

**§ 6.1.1** The ~~term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The~~ Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and ~~with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract~~ to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims a delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

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**§ 6.1.4** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall ~~have~~ be deemed to be subject to the same obligations and rights that apply to the Contractor ~~has~~ under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

...

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly ~~notify the Architect of~~ report to the Architect and Owner apparent discrepancies or defects in ~~the~~ such other construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

...

**§ 7.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. The Contractor agrees that it will incorporate the provisions of Article 7 in its entirety into all agreements with lower tier Contractors. It is further understood and agreed that these Change Order pricing provisions, apply to all types of Contracts, Subcontracts and purchases. The Owner and Owner's accountant shall be afforded access to Contractor's records, books, and correspondence, instructions, drawings, receipts, Subcontracts, purchase orders, vouchers and any other data relating to the Project as necessary to verify the cost of any change, including wages and benefits paid, for which compensation is sought under this Agreement.

...

**§ 7.1.2** A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone. Verbal notification approving the Contractor to proceed with a change in the work shall be confirmed in a written format via, CCD, Change Order, progress minutes, e-mail or other written correspondence and should be made as soon as practical.

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**§ 7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract ~~Documents. The Contractor shall proceed promptly with changes in the Work,~~ Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change ~~Directive,~~ Directive or order for a

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minor change in the Work. A Change Order or Construction Change Directive involving unit costs shall be equitably adjusted in accordance with 7.3.4

...

**.3** The extent of the adjustment, if any, in the Contract ~~Time.~~Time; and

...

**.4 Comply with all requirements of 7.2.2 below and 7.3.4.**

...

No Change Order shall exceed any of the limitations and requirements of the Contract Documents.

...

§ **7.2.2** The Contractor shall comply with the following regarding Changes:

...

(A) A Notice or Request for Change must comply with all of the following:

...

.1 specifically and in detail describe the nature and cause of the Claim; and

...

.2 specifically reference the detail(s) on the plans and the specification section(s) that are affected; and

...

.3 contain an estimate of the increase or decrease in the cost to the Owner; and

...

.4 include supporting documentation that satisfactorily justifies to the Owner overhead, profit, insurance, sales or payroll taxes and incorporate a detailed quantity survey of all Work added and deleted; and

...

.5 be submitted in a format acceptable to the Owner.

...

(B) Additive Changes must comply with the following Mark-Up schedule for Overhead, profit and bond:

...

If the Cost of the proposed change is $0.00 to $4,999.99, the total combined overhead, profit and bond must not exceed 20%.

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...

If the Cost of the proposed change is $5,000.00 to $14,999.99, the combined overhead, profit and bond must not exceed 15%.

...

If the Cost of the proposed change is $15,000.00 to $24,999.99, the combined overhead, profit and bond must not exceed 10%.

...

If the Cost of the proposed change is $25,000.00 to $49,999.99, the combined overhead, profit and bond must not exceed 7%.

...

If the Cost of the proposed change is over $50,000.00, the combined overhead, profit and bond will be negotiated but will not exceed 5%, the cost of the bond shall be clearly indicated in the detailed proposal regardless of the proposed cost.

...

(C) The Contractors' markup of Subcontractor Work and supplier's material(s) shall not exceed 7% for changes up to $24,999.99 and the markup shall be negotiated for changes over $25,000.00 but shall not exceed 5% of the Subcontractor(s) cost of the Work.

...

(D) Overhead cost shall include all the general conditions, expenses, including but not limited to, all coordination, calculations, engineering, field and office supervision, field and office rent utilities, telephone and communications expenses, office supplies, clean-up, debris expenses, administration and preparation. When both additions and deletions are involved in any one change, the allowance for overhead, profit and bond shall be computed on the net increase, if any, with respect to the change.

...

(E) For decreases in the Work or credits, the Contract Amount shall be decreased 100% of the Scheduled Value of the deleted Work plus overhead, profit and bond. Contractor and Subcontractor(s) credits shall include credit for overhead, profit and Bond, in the same percentages allowed for additive changes in the above mark-up schedule:

...

(F) The Contractor's total charge to the Owner for the use of equipment owned in whole or in part by the Contractor, its Owners, directors, officers, shareholders, or affiliated or related persons or entities shall consider the rate agreed upon between the Contractor, Owner and Architect at the beginning of the project less operator and fuel. Reference materials such as "the AED Green Book" should be used to establish market rental rates for equipment. The following shall apply;

...

.1 The appropriate duration of hourly rate shall be calculated based on the entire duration the piece of equipment is on the FCPS site (e.g. if the equipment item has been on the project for 30 days or more the hourly rate shall be the monthly rental divided by 176 hours; if on the project for one week the hourly rental shall be the weekly rental divided by 40; if on the project for a day the hourly rental shall be the daily rental divided by 8; if brought to the project for the specific operation the minimal rental period shall apply.) Minimal rental durations will be considered for equipment rented for

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specific project purposes,

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.2 The Contractor shall not invoice for delivery or removal of the equipment to or from the job site,

...

.3 In no event shall the total payment paid by the Owner on any such piece of equipment exceed fifty percent (50%) of its purchase price.

...

(G) Subcontractor(s) shall comply with the requirements specified above for the Contractor regarding Changes.

...

**.1** ~~Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation~~ Wages for construction Workers, including supervisors directly employed to perform the construction of the Work at the site. Unless otherwise agreed by Addendum to this Contract, labor burden shall be limited to: social security, old age and employment, workmen's compensation, health and life insurance benefits, sick leave, holidays, military leave, vacation and pension and savings plan benefits; insurance, and other employee costs approved by the Architect;

...

**.5** ~~Costs~~ Additional costs of supervision and field office personnel directly attributable to the ~~change.~~change, provided, however, the Contractor shall provide an itemized breakdown showing quantities, unit costs, hours and rates of labor, and other costs and such detail as may be required to allow the reasonableness of cost to the established. Similar cost information covering Subcontractors" Work shall be included as part of the Contractor's Proposal. Minimum charges for "handling' will not be acceptable. The allowable overhead and profit mark-ups to be included in the total cost to Owner shall be based on paragraph 7.2 and:

...

.1 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of the costs including labor, materials, and Subcontractors. Labor and materials shall be itemized in the manner prescribed above. Where major costs items are Subcontracts, they shall be itemized also. In no case will a charge involving over $500.00 be approved without such itemization.

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.2 A Change Order must include each of the items listed in this Article 7. In the event that there is no change in the Contract time or Contract amount, it must be noted that no such change is intended. A Change Order is all-inclusive, that is, a Change Order, must indicate the change in Contract amount, including any overhead and profit. The Contractor cannot later request additional sums for a prior Change Order because it did not include overhead, profit, or similar items. If additional Contract time is indicated on the Change Order and the Contractor intends to claim any costs for time on any basis, the Change Order must include all additional costs, if any, associated with the additional time.

...

.3 Where both additions and credits are involved in any one Change Order the allowance of overhead and profit shall be figured on the basis of the net increase, if any.

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...

**§ 7.3.8** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the ~~Architect.~~ Architect and the credit shall be as required by Article 7 mark-up schedule. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that ~~change.~~change per the mark-up schedule.

...

**§ 7.3.9** Pending final determination of the ~~total~~ actual cost of a Construction Change Directive to the Owner, ~~the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim~~ amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any potion of such costs that remain in dispute, a Claim may be made in accordance with Article 15.

...

**§ 7.3.10** When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change ~~Order.~~ Order otherwise, if Contractor is directed to proceed by Owner, the matter shall be considered a Claim under Article 15. Change Orders may be issued for all or any part of a Construction Change Directive.

...

The Architect ~~may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an~~ with the consent of the Owner has the authority to order minor changes in the work not involving adjustment in the Contract Sum or ~~an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.~~extension the Contract Time and not inconsistent with intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

...

**§ 8.1.2** The date of commencement of the Work is the date established in the ~~Agreement.~~Agreement shall be fixed in a Notice to Proceed.

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**§ 8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, ~~commence the Work~~ prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and the Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

...

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**§ 8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by ~~(1)~~ an act or neglect of the Owner or Architect, or of an employee of either, or of a Separate ~~Contractor; (2)~~ Contractor employed by the Owner; or by changes ordered in the Work; ~~(3)~~ or by labor disputes, fire, unusual delay in deliveries, unavoidable ~~casualties, adverse weather conditions documented in accordance with Section 15.1.6.2,~~ casualties or other causes beyond the Contractor's control; ~~(4)~~ or by delay authorized by the Owner pending mediation and ~~binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines,~~ with consent of the Owner; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Contractor waives any and all rights to any increased payments for delay damages, whether by Change Order or otherwise, to include overhead, extended overhead, extended general conditions, or for any other delay-based amounts of any kind or nature, for any delay by reason of the events referred to in the subparagraph or any other event of any kind or nature. Contractor's remedy is limited to an extension of time as set forth herein.

...

~~**§ 8.3.3** This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.~~

...

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect and Owner, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the ~~Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by~~ Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require. This schedule, unless objected to the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. ~~Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect,~~ The Schedule of Values shall be revised from time to time as may be necessary and due to the issuance of Change Orders or Construction Change Directives, the Contractor shall revised the Schedule of Values as requested by the Architect or Owner. The Owner reserves the right to request the Contractor to provide additional detail substantiating the Schedule of Values.

...

~~**shall** be used as **a** basis **for** reviewing **the** Contractor's subsequent Applications for Payment.~~**§ 9.2.2 The Contractor shall include a line item in the Schedule of Values for production of project record documents. The minimum value established for the record documents must not be less than 1/2 % of the total Contract value including accepted alternates.**

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**§ 9.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect and Owner an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. ~~The application shall be notarized, if required, and supported by all~~ Such applications shall be notarized and supported by such data substantiating the Contractor's right to payment ~~that~~ as the Owner or Architect may require, such as copies of ~~requisitions, and releases and waivers of liens from Subcontractors and~~ requisitions from Subcontractors and material suppliers, and shall reflect retainage ~~if~~ as provided for in the Contract Documents. Applications for Payment shall be based upon the Schedule of Values and shall be in a form and content satisfactory to the Owner. Each Application for Payment shall be accompanied by the following:

...

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.1 Contractor's application and Cost Certification Statement, AIA Forms 702, 703 and IAC PSCP Form No. 306.4, with attachment "G" Certified Minority Business Enterprise Participation Standard Monthly Contractor's Requisition for Payment" (current form), and;

...

.2 A statement from the Contractor that all items of construction for which payment is sought have been incorporated into the Project where properly stored in accordance with the Contract Documents, and;

...

.3 The Contractors and applicable Subcontractors Release of Liens and Waivers of Claim and such other documents that the Owner may require after discussion with the Contractor, and;

...

.4 Such other documentation that the Owner, Construction Manager, Architect may reasonably require after discussion with contractor.

...

**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

...

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities ~~that~~ making a claim by reason of having provided labor, materials, and equipment relating to the Work.

...

**§ 9.4.1** The Architect will, ~~within seven days~~ after receipt of the Contractor's Application for Payment, either ~~(1)~~ issue to the Owner a Certificate ~~for Payment in the full amount of the Application~~ for Payment, with a copy to the ~~Contractor; or (2) issue to the Owner a Certificate for Payment~~ Contractor for such amount as the Architect determines ~~is properly due, and~~ in properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding ~~certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided~~ certifications in whole or in part as provided by in Section 9.5.1.

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**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a

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representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

...

**§ 9.5.2** When ~~either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.~~above reasons for withholding certifications are removed, certification will be made for amounts previously withheld after the Contractor revises and resubmits a current Application for Payment including such amounts that were previously withheld.

...

**§ 9.5.4** If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or ~~supplier~~ material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the ~~Contractor shall~~ Architect will reflect such payment on its next ~~Application~~ Certificate for Payment.

...

**§ 9.5.5 If the Contractor disputes any determination by the Architect or Owner with regard to any Applications for Payment, the Contractor shall nevertheless expeditiously continue to perform the Work and shall make claim as provided in Article 15.**

...

**§ 9.5.6 The Owner shall not be deemed to be in breach of this Contract by reason of the withholding of any payment pursuant to any provision of the Contract Documents provided the Architect has approved the Owner's action, or the Work for which payment is being withheld has been rejected by any governmental authority.**

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**§ 9.6.4** The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

...

**§ 9.6.5** The Contractor's payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

...

**§ 9.6.7** Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors ~~or provided by~~ and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any

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fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

...

~~If~~ Subject to other provisions in the Contract Documents, if the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within ~~seven~~ thirty days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within ~~seven~~ thirty days after the date established in the Contract Documents, the amount certified by the ~~Architect or awarded by binding dispute resolution,~~ Architect, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's ~~reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.~~substantiated direct costs of shut-down. Article 9.7 shall not apply to Change Orders that have not received formal approval by the Board of Education of Frederick County, all such Change Orders shall not be included in Applications for Payment until the Contractor received formal notification from the Owner that the Change Order has received formal approval by the Board of Education of Frederick County and the Contractor has completed the Change Order work.

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**§ 9.8.3** ~~Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.~~The comprehensive list of items to be completed or corrected ("Contractor's Punch List") prepared by the Contractor shall be submitted to the Owner and the Architect and the Owner shall be notified of inspections and be entitled to have an Owner's representative present at such inspections. All items that are disclosed during inspections not complying with the Contract Documents shall be added to the Contractor's Punch List and a copy of the Amended Punch List shall be submitted to the Owner and the Contractor. Any Certificate of Substantial Completion shall then be submitted making reference to the Punch List item, as either being completed to the Architect's satisfaction or shall fix a time within which the Contractor shall complete any remaining items. In the event the Contractor's Punch List is not completed by the date set forth in the Certificate of Substantial Completion, Owner has the option of deducting from balances due the Contractor an amount sufficient to compensate Owner for the cost of completing the Punch List. The amount to be deducted shall be determined in the sole discretion of Owner. Alternatively, Owner at its sole discretion may proceed to engage another Contractor to complete the Punch List Work with the cost thereof to include Owner's administrative costs, which costs shall be calculated in the sole discretion of the Owner, to be deducted from the amount retained and if the amount retained is insufficient, the Contractor is responsible to reimburse Owner the full amount of the uncovered cost. To the extent that multiple inspections may be required to determine whether the Work, or a designated portion thereof has attained Substantial Completion, the Owner shall be entitled to deduct from the Contract Sum any amounts which it must pay to the Architect for additional services for such additional inspections.

...

**§ 9.8.4** When the Work or designated portion thereof ~~is~~ including Record Documents and Maintenance Manuals are substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial ~~Completion;~~ Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work provided the Contractor has completed all other contractual requirement stipulated to begin the warranty periord or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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...

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

...

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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**§ 9.10.1** Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such ~~inspection. When~~ inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

...

**§ 9.10.2** Neither retainage payments nor final payment ~~nor any remaining retained percentage~~ shall become due until all documents required by the Contract Documents and Article 5 of AIA 101 Standard Form of Agreement Between Owner and Contractor including all (a) Maintenance Manuals, (b) Record Documents, (c) Instruction and Demonstrations have been provided and the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in ~~effect,~~ effect and will not be cancelled or allowed to expire until at least 30 days, prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final ~~payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner,~~ payment and, (5) other data establishing payment or satisfaction of ~~obligations, such as receipts and~~ obligations such as receipts, releases and waivers of liens, claims, security ~~interests,~~ interests or encumbrances arising out ~~of~~ the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such ~~lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance~~ lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging ~~the lien, claim, security interest, or encumbrance,~~ such lien, including all costs and reasonable ~~attorneys'~~ attorney fees.

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**§ 10.2.4** When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall give the Owner reasonable advance notice and exercise utmost care and carry on such activities under supervision of properly qualified personnel.

...

**§ 10.2.4.1** If the Contract Documents require the Contractor to handle materials or substances that under certain circumstances may be designated as hazardous, the Contractor shall handle such materials in an appropriate manner and shall defend, indemnify, and hold Owner and Architect harmless from and against all claims, liabilities, suits, losses and damages arising out of or relating to such materials.

...

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

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**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, ~~the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such~~ costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If Work is not in accordance with the Contract Documents, ~~the costs of uncovering the Work,~~ such costs and the cost of ~~correction, shall be at the Contractor's expense.~~correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs. The cost to repair nonconforming work shall be considered a latent defect and the contractor responsible for the work or as appropriate the damage to the work shall be responsible for the cost to make repairs to said work and return the uncovered work to the condition before the work was uncovered.

...

~~The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.~~ The Contractor and its surety shall have the right to remedy any defects in the Work on materials which shall appear within a period of two (2) year from the date of Substantial Completion. Upon written notice from the Owner, the Contractor and surety shall promptly provide said remedy after notice from the Owner. If said remedy is not promptly provided, the Owner shall have the right to correct said defects and charge the Contractor and its surety for the same.

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**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within ~~one year~~ two-years after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of ~~any~~ an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do ~~so,~~ so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the ~~one year~~ two-year period for correction of Work, if the

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Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within ~~a reasonable time during that period~~ five working days after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section ~~2.5.~~2.4. If the Contractor does not proceed with correction of such nonconforming Work within five working days fixed by written notice from the Architect the Owner may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within three days after written notice, the Owner may upon ten additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Owner's and Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

...

**§ 12.2.2.2** The ~~one-year~~ two-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

...

**§ 12.2.2.3** The ~~one-year~~ two-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

...

**§ 12.2.5** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the ~~one-year~~ two-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

...

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules.~~If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~

...

**§ 13.2.2 ~~The Owner may, without consent~~ WRITTEN NOTICE**

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~~of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.~~Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

...

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**§ 13.4.7** No tests or inspections or results thereof shall constitute an acceptance of any Work not conforming to the requirements of Contract Documents.

...

~~Payments due and unpaid under the Contract Documents~~ **§ 13.5.1** Interest payments will not be required for late payments under the terms of this Contract.

...

**§ 13.6 TIME LIMITS ON CLAIMS**

...

~~shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~**§ 13.6.1** Commencement of Statutory Limitations Period and Statute of Repose shall be in accordance with the laws of the State of Maryland.

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**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of ~~30~~ 120 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the ~~Work,~~ Work under direct or indirect contract with the Contractor, for any of the following reasons:

...

~~.4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.~~

...

**§ 14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, under direct or indirect contract with the Contractor, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

...

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment ~~for Work executed,~~ as ~~well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.~~

...

~~**§ 14.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.~~set forth in the provisions of this Agreement regarding termination by the Owner for convenience.

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...

.1 ~~repeatedly~~ refuses or fails to supply enough properly skilled workers or proper materials;

...

.2 fails to make payment to Subcontractors or suppliers for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;

...

.3 ~~repeatedly~~ disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

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**§ 14.2.5** In the event that is adjusted that the Owner's termination for cause is not justified, then the Termination shall be deemed to be a termination by the Owner for convenience and the Contractor shall be entitled to compensation as only set forth in the provisions of this Agreement regarding termination by Owner for Convenience.

...

**§ 14.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. At its option the Owner may terminate this Contract in whole or from time to time in part at any time by written notice thereof to the Contractor. Upon any such termination, Contractor agrees to waive any claims for damages, including loss of anticipated profits, on account thereof, and as the sole right and remedy of the Contractor, Owner shall pay Contractor in accordance with 14.4.2 below. The provisions of the Contract, which by their nature survive final acceptance of the Work, shall remain in full force and effect after such termination to include but not limited to warranties and obligations for the correction of Work not confirming to the Contract Documents. Upon receipt of the Termination Notice, Contractor shall, unless the Notice direct otherwise, immediately discontinue the Work and, to the extent specified in the Notice, place no further orders or subcontracts for materials, equipment, services, or facilities and shall promptly make every reasonable effort to procure cancellation of such orders or subcontracts upon terms satisfactory to the Owner and shall thereafter do only such Work and perform such services as may be directed by the Owner as necessary to preserve and protect Work already in progress and to protect materials, plans and equipment on the Site or in transit thereto. Upon such termination, the obligations of the Contractor shall continue as to portions of the Work already performed and as to bona fide obligations assumed by the Contractor prior to the date of termination.

...

**§ 14.4.2** Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

...

**§ 14.4.3** ~~In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.~~Upon Termination for Convenience, the provisions of the Contract, which by their nature, survive any final acceptance of the Work, shall remain in full force and effect after such termination to include but not limited to warranties and obligations for the correction of Work not conforming to the Contract Documents. Upon receipt of the Termination Notice, Contractor shall, unless the Notice directs otherwise, immediately discontinue the Work and, to the extent specified in the Notice, place no future orders or Subcontracts for materials, equipment, services or facilities and shall promptly make every reasonable effort to procure cancellation of such orders or Subcontracts upon terms satisfactory to the Owner and shall thereafter do only such Work and perform such services as may be directed by the Owner as necessary to

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preserve and protect Work already in progress and to protect materials, plant and equipment on the site or in transit thereto. Upon termination, Contractor shall be entitled to be paid the full cost of all Work properly done by Contractor on account of the portion of Work Performed. If at the date of such termination, Contractor has properly prepared or fabricated off the site any goods for subsequent incorporation in the Work, and if Contractor delivers such goods to the Site or to such other place as the Owner shall reasonably direct, then Contractor shall be paid for such goods or materials. No other payment shall be made by reason of damages or otherwise, including but not limited to loss of anticipated profits, overhead, or any other claim or amount whatsoever.

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**§ ~~15.1.3.1~~** ~~Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party~~ **15.1.3.** Claims by the Contractor must be made by written notice to the Owner and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by ~~either party under this Section 15.1.3.1 shall be initiated~~ Contractor must be made within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the ~~claimant~~ Contractor first recognizes the condition giving rise to the Claim, whichever is later. Contractor claim(s) shall not be valid unless made in strict accordance with this subparagraph.

...

**§ 15.1.4.1** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. -The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

...

If the Contractor wishes to make a Claim for an increase in the Contract Sum, ~~notice as provided in Section 15.1.3~~ written notice as provided herein shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. A Claim must be processed as defined herein, Article 15 and comply with all requirements of Article 7.

...

**§ 15.1.6.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, ~~notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.~~written notice as provided herein shall be given. No claim for delay damages of any kind or nature shall be valid and no such damages shall be paid by the Owner except upon Owner's written consent which consent is in the sole and absolute discretion of the Owner. No written consent by Owner to damages for one period of delay, entitle Contractor to damages for any other period of delay. A Claim for additional time must be for adverse weather conditions and the actual conditions must exceed the cumulative monthly adverse weather day totals indicated in 15.1.5.2.

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**§ 15.1.6.2** If adverse weather conditions are the basis for a Claim for additional time, the time must exceed the time as defined in the schedule below, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, exceeded the schedule below and could not have been reasonably ~~anticipated,~~ anticipated and had an adverse effect on the scheduled construction. The State of Maryland, Department of General Services, Special Provisions Section of Hagerstown, Maryland will be used in the calculation of the monthly anticipated adverse weather delays. The monthly-anticipated adverse weather delays are as follows, in workdays. The Contractor's schedule must reflect these anticipated adverse weather delay days in weather dependent activities:

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...

In any event, Contractor's Claim(s) for delay in the performance of the Work due to adverse weather conditions is strictly limited to a Claim for additional for additional time only. In no event shall the Contractor be entitled to monetary damages or any other compensation as a result of a delay in the performance of the Work due to adverse weather conditions.

...

**§ 15.2.1** Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any ~~Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered.~~ Claim . Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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**§ 15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be ~~final and binding on the parties but~~ subject to mediation and, if the parties fail to resolve their dispute through ~~mediation, to binding dispute resolution.~~mediation the claim shall be resolved by litigation.

...

**§ 15.2.6.1** Either party may, within 30 days from the date ~~of receipt~~ of an initial decision, demand in writing that the other party file for ~~mediation.~~ mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within ~~30 days after receipt thereof,~~ the time required, then both parties waive their rights to mediate or pursue ~~binding dispute resolution proceedings~~ litigation with respect to the initial decision.

...

**§ 15.4.1** ~~If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~All disputes and other matters in question between the parties to this Agreement which cannot be resolved by the parties in accordance with the terms of this Agreement shall be referred to legal counsel and resolved in the Circuit Court for Frederick County, Maryland and all parties hereto agree to submit themselves to

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...

~~§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~the jurisdiction of that Court. During any legal proceedings or other dispute resolution proceedings

...

~~§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~which may be

...

~~§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~agreed to between the parties, Owner and Contractor shall

...

~~§ 15.4.4 Consolidation or Joinder~~

...

~~§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~comply with sub-paragraph 4.74.

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~~§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

...

~~§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.~~

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*(Signed)*

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*(Title)*

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*(Dated)*

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